Ontario. Royal commission to investigate trading in the shares of Windfall oils and mines limited. Report 1965.

ONTARIO

REPORT

of

THE ROYAL COMMISSION

to

INVESTIGATE TRADING IN THE SHARES

of

WINDFALL OILS AND MINES LIMITED

September, 1965

COMMISSIONER	Mr. Justice Arthur Kelly
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Assistant	James Karfilis
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R. C. McMaster, Detective Sergeant, Metropolitan Toronto Police

Robert Barron, Detective Sergeant, Ontario Provincial Police

Donald Banks, Detective, Metropolitan Toronto Police

THE ROYAL COMMISSION

(*Sgd.*) W. Earl Rowe

PROVINCE OF ONTARIO

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO THE HONOURABLE ARTHUR KELLY, of Our City of Toronto, in Our Province of Ontario, A Justice of Our Court of Appeal of Ontario, and One of Our Counsel learned in the Law.

GREETING:

Whereas in and by Chapter 323 of The Revised Statutes of Ontario, 1960, entitled "The Public Inquiries Act", it is enacted that whenever Our Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, he may, by Commission appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the commissioner or commissioners deem requisite for the full investigation of the matters into which he or they are appointed to examine;

And Whereas Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause inquiry to be made concerning the matters hereinafter mentioned:

Now Know Ye that We, having and reposing full trust and confidence in you the said Arthur Kelly Do Hereby Appoint you to be Our Commissioner,

1. to investigate, inquire into and report upon:

   (a) the events involved in and the causes of the recent fluctuations in the prices of the shares of

      (i) Windfall Oils & Mines Limited, and

      (ii) such other mining corporations as you may deem fit in relation to the recent mineral discoveries in the Timmins area; and

   (b) the circumstances and events pertaining to the recent sales, purchases and other dealings in the shares of Windfall Oils & Mines Limited and of any such other mining corporations, and the activities and conduct of any person, company, corporation or organization in relation,

whether direct or indirect, to such sales, purchases and other dealings; and

(c) the function, role and activities of the Toronto Stock Exchange and the Ontario Securities Commission in connection with the matters set out in (a) and (b) above;

2. To make such recommendations in regard to the above as you may deem fit.

And We Do Hereby Confer on you, Our said Commissioner, the power to summon any person and require him to give evidence on oath and to produce such documents and things as you Our said Commissioner deem requisite for the full investigation of the matters into which you are appointed to examine;

And We Do Hereby Further Order that all our departments, boards, agencies and committees shall assist you, Our said Commissioner, to the fullest extent, and that in order to carry out your duties and functions, you shall have the authority to engage such counsel, research and other staff and technical advisers as you deem proper;

To Have, Hold and Enjoy the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

In Testimony Whereof We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: The Honourable William Earl Rowe, A Member of Our Privy Council for Canada, Doctor of Laws, Lieutenant Governor of Our Province of Ontario

at our City of Toronto in Our said Province, this thirteenth day of August in the year of Our Lord one thousand nine hundred and sixty-four and in the thirteenth year of Our Reign.

BY COMMAND

John Yaremko
Provincial Secretary and
Minister of Citizenship

To His Honour, the Honourable William Earl Rowe, P.C., LL.D.,
The Lieutenant-Governor of Ontario

Sir:

I have the honour to submit my Report, as Commissioner appointed by Order-in-Council, under date of 13th August, 1964.

I have the honour to be,

Sir,

Your obedient servant,

ARTHUR KELLY
Commissioner
Ontario Royal Commission
on
Windfall Oils and Mines Limited

1965

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Ontario Mining Association
Prospectors and Developers Association

Franc R. Joubin
Labow Mining Company Ltd.

FOREWORD

Public hearings were held on 44 days, beginning 26th February, 1965; with but one interruption, due to an appeal to the Court of Appeal from a ruling of the Commission, sittings proceeded continuously down to 26th May. Two special sittings were held on 11th June and 25th June. Eleven of the sessions were held in Timmins and the remainder in Toronto. 144 witnesses gave testimony and 4 exhibits were introduced.

The public sittings were preceded by extensive investigations by members the Commission staff, as a result of which I was able to avoid calling many w nesses whose testimony would have been of no assistance. The contents of the report, however, I have based upon the evidence adduced at the public hearings

At the outset, through the medium of paid advertisements in the public p representations and comments were invited on any subject considered pertinent to the inquiry. Two briefs were volunteered; four witnesses presented themselves during the sittings held in Timmins; and, in all, approximately fifty communications were received offering information, complaints or suggestions.

Eight hundred persons who had been owners in a small way of Windfall C pany shares during July 1964 were invited to express their views by answering questionnaire. The persons selected included about an equal number of those had made gains and those who had suffered losses. Responses were received 79.2% of those to whom enquiries were directed, and the tabulation of the replies, appearing in Appendix B, furnishes valuable data regarding the attitude of the investing public towards speculative mining issues. I have already thanked, individually, those who attached names to the replies. To those who assisted in this phase, but availed themselves of the offer to remain anonymous, I now extend my thanks.

The records of the office of the Mining Recorder at Timmins, relating to all mining claims in the Porcupine area, were examined and analyzed by the Commission staff. I am indebted to Chris Egerton, Esq., the Mining Recorder, for his assistance and his patience in putting up with the unavoidable disturbance of his office.

The examination of the trading on the Toronto Stock Exchange during the month of July in shares of the Windfall Company, involving the collection of the full details of some 26,000 individual transactions, was made by the use of electronic data processing equipment. My gratitude is due to James C. Baillie, Esq., and his firm, Messrs. Tory, Tory, DesLauriers & Binnington, through whose kindness his services were made available. I am also indebted to the Securities Commissions of the Provinces of British Columbia, New Brunswick, Nova Scotia, Manitoba, Ontario and Quebec, and the Securities and Exchange Commission of the United States, for valuable assistance in the completion of the records of this study.

It would not have been possible to have achieved the high degree of accuracy

shown in the analysis of these transactions without the co-operation of the members of the Toronto Stock Exchange, and to them I express my gratitude.

A personal examination of the operations of certain phases of the Security and Exchange Commission and of the New York Stock Exchange was made, and a great deal of information pertinent to the work of this Commission was freely made available. For this assistance I wish to record my thanks.

The Commission was served by a highly efficient staff of experienced investigators: Inspector H. S. Thurston, Metropolitan Toronto Police; Detective-Sergeant R. C. McMaster, Metropolitan Toronto Police; Sergeant Robert Barron, Ontario Provincial Police; Detective Donald Banks, Metropolitan Toronto Police, and N. W. H. Cox, Ontario Securities Commission. To them, and to Chief of Police Mackey, Metropolitan Toronto Police; Eric Silk, Q.C., Commissioner of the Ontario Provincial Police, and J. R. Kimber, Q.C., Chairman of the Ontario Securities Commission, I wish to express my gratitude and thanks. Without the skilled assistance of these investigators, the work of the Commission could not have gone forward as rapidly and as effectively as it did.

I wish also to acknowledge the assistance of many whose efforts advanced the work of the Commission: J. F. McFarland, Dr. Harold Seigel and Dr. H. D. Carlson, who prepared papers included in this report; also the members of the Ontario Provincial Police, members of the staff of the Department of Mines, the Attorney General's Department, including the Ontario Securities Commission, and the Department of Public Works.

The task of editing the report was lightened by the skilful assistance of Professor Bertie Wilkinson. For his co-operation and the great improvement he brought about in the report, I wish to record my appreciation.

It would not be proper to omit a reference to the attentive and intelligent coverage of the proceedings of the Commission which was afforded by the members of the press. The presence of the same representatives throughout the sessions did much to promote the co-ordination of the daily reports, and their knowledge of the background of the financial industry assured an interpretation of the testimony which, in itself, was at many times confusing.

A major part of the direction of the investigations was assumed by the Commission Counsel, E. Patrick Hartt, Q.C. To him and his assistant, James Karfilis, must go the credit for the organization and presentation of the testimony and the resultant simplification of the picture it revealed. In a very special way, and beyond the requirements of their offices, these gentlemen have borne a significant part of the Commission's work. To them I express my most sincere gratitude.

To H. William Biggar, Esq., the Registrar, and to the loyal and efficient staff assembled to assist in the work, my thanks are gratefully extended.

When a member of a Court is asked to act as Commissioner under the Public Inquiries Act, the burden of his judicial duties falls upon the other members of the Court. For the better part of a year, the members of the Court of Appeal for Ontario have shared amongst them the work of the Court which I ordinarily would have done. I acknowledge with gratitude the assistance thus accorded by Chief Justice Porter and my colleagues of the Court of Appeal.

CHRONOLOGY OF EVENTS

1963

Nov. 7 Texas Gulf Sulphur commences drilling in Kidd Township quently becomes discovery hole.

Nov. 11 Texas Gulf drilling encounters massive sulphides.

1964

Feb. 24 Jean Chouinard purports to stake claims 56596-56599 on Concession 1, Prosser Township: this property subseque part of the Windfall claims.

Mar. 13 Above claims were recorded.

25 Jean Chouinard transfers all interest in these claims to Texas G

Apr. 12 Larche, Rousseau and McKinnon stake claims 60352-60355 o 9, Concession 1, Prosser Township.
Charles Fogarty, Executive Vice-President of Texas Gulf concerning alleged strike by Texas Gulf. Quoted as s "premature and possibly misleading."

13 An inspection ordered to determine validity of staking of 56599.

16 Texas Gulf Company officially announced its mineral dis Timmins area.
Article by Graham Ackerley of Northern Miner "Timmins and Dealing in Intense Scramble for Ground" (Exhibi

17 Texas Gulf received Inspection Report #11 dated declared staking of mining claims 56596-56599 involved a cancelled under Section 92 (2) of the Mining Act of On

18 R. V. Porritt, President, Noranda, rejects offer by and McKinnon to see claims.
Viola MacMillan concludes deal to purchase from Larche, Rousseau McKinnon 12 claims.

20 Claims 60352-5 recorded.

22 Directors' Meeting of Windfall Company approves purch MacMillan.
Windfall files Filing Statement No. 1081 with T.S.E.

23 Northern Miner—"Discovery Sparks Explosive Staki mins Area" (Exhibit No. 125) by M. Brown.

30 Northern Miner—"Timmins Staking Slackens a Litt Starting" by M. Brown (Exhibit No. 126).

May 1 Dr. (Rocky) S. S. Szetu retained to do a fall claims in Prosser Township and Wark Township.

11 Dr. Szetu and his crew commenced line cutting and chaining on property.

31 Vernon Oille, Noranda Explorations representative Quebec, notifies his company of Windfall's work to date.

June 20 Windfall Company enters into a drilling contract with Bradley

23 Dr. Szetu signs his report to accompany Exchange Filing (Exhibit No. 53).

25 Diamond drilling rig moved on to Windfall property Bradley Bros. Ltd.

9 At 1:30 William Lipsett began to accumulate the 145,000 shares he bought. Other traders (Fidler, Darke, Bragagnolo, etc.) also took large position between 2:30 and the close as the MacMillans sold large blocks of stock.

About 2:45 the price broke through the old high. James Scott, Financial writer (Globe & Mail), met Mr. and Mrs. MacMillan and John Campbell at the Lord Simcoe Hotel.

Telegram to all six Branches Walwyn Stodgell & Co. Ltd. signed Helen (Vacha).

"Rumours on Windfall"—assay report (Exhibit No. 161) Moss Lawson & Co. Ltd.—wires dated July 9.

"Rumours only—2.4 copper 8 point zinc" (Exhibit No. 182).

Stock Market News & Comment Ltd.—favourable report written by Alan F. Percival (Exhibit No. 123).

Article written by M. Brown (Northern Miner) "Windfall Hole Excites Interest in Prosser Twp" (Exhibit No. 128).

Kenneth Darke, Texas Gulf geologist, and a partner with Bragagnolo and Angus quotes Edgar Bradley as saying, "Windfall core was better as far as ore goes, than anything he had seen in the B body of the Kam Kotia property."

10 After a 30 minute delay at the opening, trading commenced at $3.25—a $.75 jump above the previous day's close.

Private Wire to All—J. H. Crang & Co.—signed Eric Scott. "situation still very speculative, from what I have been able to find out, I believe your clients should be long some stock—so that if it is big, and it could be, they will be able to increase their holdings with an average under the market" (Exhibit No. 158).

TSE makes formal demand on Windfall Company for more information. Instruction given to Breckenridge, McDonald & Company to re-allocate sales made for Variometer.

Moss Lawson & Company Ltd. brokerage wire—signed Ted (O'Rourke) "We have no story on WDM. She claims she has no news. Frame has been thinking of closing up for some time. There will be no loss to their clients. I am told but they won't likely open again." (Exhibit No. 184).

Moss Lawson & Company Ltd. brokerage wire "if the story is true about commercial ore, could go a lot higher" (Exhibit No. 183).
Graham advises Viola as to action TSE proposed to take—she promised further report.

Cole's letter to Exchange.

11 Campbell meets with the MacMillans at their country home.

Campbell phones Graham.

Campbell phones Wardrope for appointment next day.

Campbell visits George Gardner at his country home.

Ronald Mills delivers eight core boxes to Timmins and stores them.

12 Campbell visits General Graham at his home.
Campbell, Wardrope, the MacMillans and Brady Lee meet at the Royal York Hotel.

13 Wardrope calls Graham before the opening of the market.
Graham promised further report. Trading permitted to continue.

Investor uncertainty as to whether Windfall would be suspended from trading caused the price to open at $3.20, down $.80 from Friday's close.

Article written by Claude Taylor (New York Herald Tribune)—"Windfall Stirs Investors" (Exhibit No. 122).

"Best rumours on the hole is around 90 feet of 2.3% copper and 8% zinc, followed by a band of barren rock and then a slug of high grade."

Dr. Ambrose discusses results of his examination of the core with Viola MacMillan over the telephone.

Meeting at the OSC offices with representatives from the OSC, TSE and Windfall Company. OSC makes Press Release putting core under lock and key, circulated over Exchange wire system.

14 Private Wire to All—J. H. Crang & Company signed Eric Scott—he recommends long position being maintained. "There is a possibility that this could be a $10 to $20 stock." (Exhibit No. 159)

Article written by Vincent Egan (Globe & Mail) "Windfall Letter Tells TSE Little; Stock Dips, Soars" (Exhibit No. 140).

Article by Alastair Dow "Windfall: Assays Held Up While They Build Core Shack" (Toronto Daily Star) (Exhibit No. 143).

The price fluctuated in a general up-trend on relatively moderate volume.

15 Texas Gulf Sulphur moves drill on the half lot East of Windfall to test continuation of anomaly on Windfall claims.

Article by Alastair Dow (Toronto Daily Star) "Windfall Slows To Trot MacMillans Stay Away" (Exhibit No. 144).

16 M. Brown, Acting Editor of the Northern Miner, in his efforts to get information regarding Windfall, phoned the Minister of Mines, the Honourable George Wardrope, got no information but claims he was left with a definite impression that Windfall "had something."

Article by Alastair Dow (Toronto Daily Star) "Windfall: OSC Satisfied No Assays Taken" (Exhibit No. 145).

Article by M. Brown (Northern Miner) "Major Situation in the Making for Windfall?" "Have Mining MacMillans Scored Again?" (Exhibit No. 129).

18 Article by Kaplan had as its source the New York Herald Tribune. Kaplan checked the information with Claude Taylor, but Taylor was unable to identify the source of rumours about the strength of the yield on Windfall property.

19 Ackerley and Brown of the Northern Miner met with Viola MacMillan in Timmins, and, according to Brown and Ackerley, they were certain the MacMillans were withholding information, but did not know their purpose.

20 At the opening, buyer interest increased, putting the price through the old high of $4.75.

Many traders seemed to feel that a break through the $5.00 level indicated a mine had been found.

22 Private Wire to All—J. H. Crang & Company—signed Eric Scott. "Do not expect any assays for about 10 days. I still feel it can be a big one" (Exhibit No. 160).

Article by James Scott (Globe & Mail) "Plungers Flush as Rises Defy TSE Gravity" (Exhibit No. 138).

22-24 Although at the opening on July 22 the price slipped below the $4.75 break-out level, it had recovered by the close. However, in the next two days, July 23 and 24, it failed to affirm the up-trend.

23 Article by M. Brown (Northern Miner) "Windfall Still Mum on Drill Results" (Exhibit No. 130).

24 George MacMillan took 27 samples of core to Swastika Laboratory for assay. Dr. Kerr-Lawson received samples on this date.

25 Second drill added on Windfall property.

27 Telegrams to Mr. George MacMillan, TSE and Alastair Dow sent from New York at 11:15 a.m. were received in Toronto about 12:25.

Fake wire from N.Y. signed George MacMillan.

The price fell off rapidly from the opening onward.

Texas Gulf drill hole started July 15th proves abortive.

Sale by Consolidated Golden Arrow of Windfall shares as reported by the Northern Miner.

28 Sales by 3 large traders accounted for 226,000 shares out of day's total volume of 661,000 shares.

Article by A. Dow (Toronto Daily Star) "Windfall 'News' was All a Hoax" (Exhibit No. 146).

29 Swastika Laboratories Limited mailed to Windfall Oils & Mines Limited Certificate of Analysis 36295 on 27 samples of split core.

30 The price of the stock rose gradually on quiet trading until 3:00 p.m. when heavy buying interest moved price and volume up markedly. The key rumour in this last spurt was a widely accepted story that the assay result was excellent, 3.4% copper and 8% zinc over 120'.

Moss Lawson & Company Ltd. "Have been talking to a prominent mining man who is down here on vacation, and he says Viola put the core in her station wagon and took it in to Toronto and showed it to prominent mining group. For what it is worth, he says it must have been terrific" (Exhibit No. 185).

Article by M. Brown (Northern Miner) "Windfall's Silence on Drill Results Surprises Followers" (Exhibit No. 131).

Directors' Meeting of Windfall opens envelope containing assays.

31 The opening of trading was delayed 35 minutes due to the rush of sell orders resulting from the announcement of the evening before that the assays showed no value. At the opening floor traders and principals of member firms stepped in to buy 85% of the 240,000 shares traded at the $.80 opening price.

Article by James Scott (Globe & Mail) "Windfall's Assay Without Worth: TSE Plans Probe" (Exhibit No. 139).

Article by Alastair Dow (Toronto Daily Star) "Wishart Calls Probe Into Windfall Flop" (Exhibit No. 148).

Aug. 6 Article by M. Brown (Northern Miner):
a) "A Black Day for Canadian Mining"
b) "Windfall Drill Hole Fizzles Minor Copper, Nothing Else"
c) "Events of Windfall Fiasco Reviewed in Sequence"
d) "Windfall Inspires Official Probes" (Exhibit No. 132)

10 On advice of Counsel, transfer effected between MacMillan Controlled Companies accounts to eliminate short position.

13 Order-in-Council appointing Commission.

I

INTRODUCTION

As far back as history records, man has been irresistibly attracted to the quest for mineral wealth hidden below the earth's surface. The presence of vast mineral resources in the Canadian Shield has proven time and again to be a magnet drawing into the wilderness men who have been prepared to sacrifice their comfort in exchange for an opportunity to pit their skill against nature in an attempt to win the rich rewards flowing from the discovery of an ore body of commercial proportions.

The softening effect of urbanization, and the increased emphasis on technology in prospecting, have somewhat dulled the sense of personal participation which marked the earlier mineral discoveries; but this has been balanced by the increasing number of persons who have become involved in mining development by the purchase of shares of mining companies, a means of participating in the profits and risks without sharing in the physical hardships.

Thus, in addition to the "rush" to the scene of the mineral discovery, there follows a secondary rush to the stock markets; and, through the merchandising methods of the financial industry, there is a wide-spread effort to secure as buyers of mining company shares, willing people who would not otherwise become involved in mine finding and mine making.

In April 1964, a major discovery of copper and zinc bearing ore in the Timmins area of Northern Ontario was announced. This news and earlier suspicion of its imminence touched off a chain of events of wide-spread consequence. Sparked by the primeval urge for wealth, by the resurgent hopes of the people of Timmins for a new lease of life for their community, by the unquenchable optimism of the mining fraternity and by the burgeoning condition of the economy, there followed a staking rush around the scene of the discovery. There were frantic efforts to acquire properties. Some were made by those who wished to develop a mine. Others were by those who wished principally to have a "vehicle" for the promotion of public participation through stock ownership. All were encouraged by a feverish disposition on the part of large numbers of people to send forth their money on a venture which they hoped would be fabulously profitable.

Of the many mining companies whose shares, in the period following the discovery, left an erratic record of market prices, that of Windfall Oils and Mines Limited was undoubtedly the most spectacular. The rise in the market price of its shares during the month of July was almost unparallelled both in height and duration. The sudden drop in the price of its shares, when the long delayed assays indicated the absence of any mineral of commercial value, left many investors poorer for the experience. There was inevitably much questioning as to how the loss occurred; and the direct result of all this was the appointment of the present Commission.

In accordance with its terms of reference, the Commission has sought by an exhaustive investigation into all matters of possible relevance, to winnow out the actual occurrences which affected the areas singled out for inquiry; to review the regulatory provisions, public and private relating to mining companies, their shares and the trading of those shares on the Toronto Stock Exchange; and to consider whether the law had been broken. It has also sought to determine if the regulatory provisions were appropriate to afford the public the protection it is justified in expecting from regulatory bodies which are active in the mining branch of the securities marketing industry.

An endeavour has been made to avoid bringing into the body of this report anything which is not strictly relevant. Some events, now known to be unrelated to the Windfall picture, gave such indications of involvement that enquiry into them was necessary if for no other purpose than to disprove their relevancy. Others, while not direct and obvious causes of developments which occurred, created the atmosphere without which the major events could not have taken place. The testimony before this Commission, in the main, dealt with events which took place in July, 1964. Except where otherwise noted, this Report is related to circumstances as they existed at that time; all references to statutes, rules and regulations are to those which were in effect on that date.

The desire of the Government of Ontario for an examination of the matters referred to this Commission points out the important role that metallurgical mining plays in the economy of the Province. Mines by their nature are wasting assets, and their resources are bound to be exhausted by the very process by which they add to the prosperity of the country. Hence, for the continuance of the industry the finding and development of new mines is of constant importance. Ontario has been fortunate in that there has been no lack of people who would look for the evidence of the hidden wealth, the prospectors and those who make the prospectors' work possible, the investors and/or speculators, call them what you will, who have been willing to risk their capital.

Many successful mining companies have turned their attention, and devoted part of the return from their operation, to the finding of mines; but even this flow of money and the knowledgeable manner in which it has been expended have not superseded the activities of independent prospectors or lessened substantially their chances of success. Hence, the continuation of the flow of risk capital from the individual investor into the exploration for minerals remains necessary for the perpetuation of the mining industry. Abuses in the handling of this flow, if permitted to divert funds from the purpose for which the investor intends them to be used, can seriously impede the flow; on the other hand, there is a danger that, in removing the undesirable features, the source on which the industry relies may be destroyed. This would obviously be as harmful as letting the abuses continue.

The examination of the method of financing mining ventures through primary distribution has been approached with an appreciation of its great importance to the economy of the Province. The urge to speculate on mining ventures, and the need of the industry for the capital made available through that urge, have an affinity; both can be satisfied if they are provided with the proper channels. The

possibility of personal profit beyond the value of the service rendered has, however, attracted many persons to engage in the process of providing apparent channels for this flow of capital. The consequence has been that a seemingly high percentage of the funds of the investors has failed to reach the property sought to be developed, to the detriment of both the investor and the mining industry.

One quest of this Commission has been to discover and bring to light the losses, particularly the avoidable and reducible losses, which occur in the passage of funds from the investor to the mining property, but to leave to those better qualified by their experience the task of evolving the cures which will prevent, or at least reduce to a minimum, the wastage which so frequently occurs at stages between the investor and the mining property.

II

THE TEXAS GULF SULPHUR COMPANY FIND

The discovery of gold in the Porcupine area gave birth to the Town of Timmins; in what had been a wilderness, the magnitude of the producing mines of that area developed a town of some thirty thousand inhabitants, and for half a century fed its prosperity and insulated it from the vagaries of the economic conditions generally prevailing in Ontario.

By the fiftieth anniversary of the first strike, there were reliable indications that the ore reserves of the major mines were nearing exhaustion, and that only a new discovery of sizeable proportions could prevent Timmins from rapidly becoming the ghost town it seemed destined to be. To a one-industry community, the future was not bright and justifiable pessimism seemed to be growing. Timmins dearly longed for something to prolong its life.

Unknown to Timmins, events of importance were in the making. In 1957, Texas Gulf Sulphur Company (Texas Gulf), after an intensive geological study, had launched an airborne examination of the Canadian Shield. In a search for indications of sulphides, the area from Chibougamau in Quebec to Flin Flon in Manitoba had been flown over by planes equipped with geophysical instruments.

As a result of its preliminary work, Texas Gulf decided to concentrate its exploration in a small area north and west of Timmins. Using its own airborne unit, work started in this section in March of 1959. Immediately after its inauguration, an accident to the airplane delayed work till midsummer. On resumption, several anomalies* of geophysical significance were recorded.

The active phase of the program in the Timmins area continued until the winter of 1961-2, at which time, apart from several anomalies on patented lands, exploration of all anomalies which Texas Gulf proposed to examine had been completed.

From midwinter 1961-2, until October 1963, no exploration work was done in the area north of Timmins, the personnel and equipment of Texas Gulf being engaged in work on Baffin Island.

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*Anomaly is used to describe the reaction recorded by geophysical instruments in which there is a variation from the norm. The anomaly may indicate the presence below the surface of some conductive material or magnetic material.

Conductive material causing the anomaly may be metal bearing or only graphitic; if graphitic it is usually of no economic significance.

In the Timmins area copper ore occurs as and with other sulphide minerals and in many instances, at the contact of lava flows. The lava flows are usually andesite, dacite and rhyolite.

Drilling is carried on to investigate the nature of the material producing the anomaly to ascertain if there be in it copper, zinc or other metals of economic importance.

The accepted practice in drilling is therefore to traverse the material causing the geophysical anomaly and go beyond it by a convenient distance, say 50-100'.

An examination of the core produced by such drilling will reveal the nature of the material causing the anomaly and permit a determination of the value of metals that may be contained in it. Visual examination will usually determine, at least approximately, whether copper or zinc is present in commercial quantities. Where a visual examination indicates the need for more exact estimates of values it is followed by a chemical analysis of a half split of the diamond drill core taken from the zone considered of importance.

In the interval, lengthy negotiations had been carried on leading to the acquisition of the mining right on lot 3, concession V, Kidd, a piece of patented land originally granted to a Boer War veteran. In June 1963, these negotiations were successfully completed and that lot became available to Texas Gulf. Around October, 1963, Kenneth Darke, the field exploration engineer, who had been in charge of the earlier work, returned to start line cutting and geophysical work on the north half of lot 3, concession V, Kidd Township.

On 7th November, a diamond drill hole was started on the property, at a point fixed by Darke, to intersect an airborne conductor. By the 10th or 11th of November, the drill had reached a depth of 150 feet and produced a core, the visual examination of which indicated massive sulphides containing copper and zinc. Darke immediately phoned Dr. Walter Holyk, the exploration manager for Texas Gulf, who came from Toronto, arriving the next day. Elaborate security precautions were taken—the core, when the hole had been completed, was quietly sent to Salt Lake City, Utah, for assay; the discovery hole was camouflaged and trees were planted over it; a decoy hole was drilled in the immediate vicinity and worthless core was left half hidden for the benefit of anyone who was disposed to look for it. Further drilling operations were carried on at some considerable distance from the discovery hole.

The geological and geophysical staff of the Texas Gulf Company from data in their hands determined the areas which they considered desirable to acquire; the basis of their selection was the presence of conductors indicated from the airborne anomalies.

Holyk, Darke and R. H. Clayton, a company geophysicist, laid out a program, to stake and record mining claims, aimed at acquiring every property within a prescribed area which had recorded an airborne anomaly. As a result of this program, some 250 mining claims were staked, embodying all the claims sought, with the exception of four in Prosser Township, the history of which is elsewhere recorded.

In addition, by virtue of an agreement with Woollings, a subsidiary of the Curtis Publishing Company, Texas Gulf obtained exploration rights over some fifty-five thousand acres and the right to acquire by purchase seventeen thousand acres in this tract.

Work on the acquisition of properties continued down till 3rd March, when the last property was staked. On Saturday, 11th April, R. D. Mollison, the officer of the Texas Gulf, in charge of the Canadian operations, spoke, by telephone, from Connecticut to Graham Ackerley, a reporter of the *Northern Miner,* and arranged for Ackerley to go to Timmins to meet him.

Ackerley had had some previous discussions with Texas Gulf officials as to the work they were doing in the Timmins area, and had suspicions that there was some announcement of importance to be made. He had extracted a promise from Texas Gulf officials that he would be given the opportunity of making the first press announcement. He went to Timmins on Sunday, 12th April, and on Monday morning, in company with Mollison, was flown to the property, where he met Darke and Holyk. He was allowed to examine core which had been taken from seven different drill holes and was given figures on the assays of two of these cores.

By arrangement with Mollison, he returned to Timmins and wrote his story of the discovery; and at Mollison's insistence, he handed the text to Mollison, who was to deliver it at the office of the *Northern Miner* on Wednesday, 15th April, the day upon which the paper went to press, in order that it might appear in the edition of 16th April. In the meantime, strict silence was exacted from Ackerley. The text of the story, the only one in existence, was flown to Toronto by Mollison and delivered from the airport in Malton to the editor of the *Northern Miner* by taxi cab. It reached the *Northern Miner* sometime around noon on 15th April and was published in the issue dated 16th April. In the same issue, there appeared an editorial concerning the discovery, written by the editor, John Carrington.

After the appearance of this issue of the *Northern Miner,* the public was fully aware of the magnitude of the discovery.

III

EARLY STAKING ACTIVITIES

The records of the Mining Recorder at Timmins, the official with whom, under the provisions of the Mining Act of Ontario, the particulars of claims staked must be recorded,* indicate that early in 1964 the average number of claims recorded in his office increased beyond the normal. The magnitude of this increase is indicated by the fact that the total number of mining claims recorded in that office in the calendar year 1963 was in the neighbourhood of one thousand nine hundred and ninety-five. During the calendar year 1964, over twenty thousand claims were recorded, of which at least a half were recorded in the first four months of the year. The number is more impressive when it is borne in mind that, in this particular area, a large amount of the land was patented land and was not open for staking under the Mining Act.

The staking and recording of such a large number of claims represent the activity in the field of a large number of people. The attention of the Commission was confined to the work of but three of the many groups engaged in staking claims during the latter part of 1963 and early part of 1964, two of the groups because their work involved directly the mining claims which the Windfall Company bought, and the third because information furnished to the Commission investigator indicated that there had been at one time some business relation between the group and one of the vendors of the Windfall claims to Viola MacMillan. As will be shown later this business relationship was of no significance as far as the Windfall claims were concerned. Nevertheless, its existence made it necessary to extend the enquiry to include the activities of the parties involved.

Bragagnolo, Darke and Angus

Nedo Bragagnolo, a resident of Timmins, who described himself as a real estate broker and prospector, had had an interest in mining properties over some period. He had grown up in Timmins and was a life long friend of John Angus a broker associated with T. A. Richardson & Co.; he had known Kenneth Darke since Darke came to the Timmins area some five years previously. At first, his acquaintanceship with Darke had been casual, but around November 1963, they became more intimate. The reason was that they were "playing the market" together in two stocks, Transterre and Consolidated Mogul, and discussed these stocks together. Sometime in November, 1963, Nedo Bragagnolo approached John Angus, who was then the manager of the Timmins office of T. A. Richardson & Co., with the suggestion that they should together stake ground around the Timmins area, in the locality where he believed Texas Gulf had made a find. Nothing came of this discussion at that time, but it was revived in January 1964, at which time Nedo Bragagnolo suggested that Kenneth Darke would be a good partner to have in the syndicate. He knew Darke was with Texas Gulf and believed that, "If you want to get anything done, go to the top. I felt he was the

*See Appendix A. "Staking Requirement Under the Mining Act."

top man in the area". He felt that Darke's qualifications were unusual and would be helpful to Angus and himself in the location of promising properties. Darke had some qualms in regard to the possibility that conflict might arise from this association. But, because Nedo Bragagnolo had informed him that he was going ahead anyway, he (Darke) entered into the partnership on the basis that no ground which he wanted for Texas Gulf would be staked by Bragagnolo. Bragagnolo, on the other hand, denied that any such arrangement was made as to priority. He stated that he had received no information from Darke, before, during, or after, the staking but recognized that Darke would have an earlier claim on all the properties.

Thus, in January 1964, Nedo Bragagnolo, Angus, and Darke, who was still employed by Texas Gulf, became equal partners in a venture to stake mining claims as close as possible to the Texas Gulf operation.

The existence of this partnership was not disclosed, its operations being outwardly those of Bragagnolo, to whose name were transferred 241 mining claims recorded by various stakers. None of these claims ever became the property of Texas Gulf. Late in April 1964, Angus withdrew from the partnership, selling his interest to the other partners, who continued their association in this venture. The claims staked for the partnership were mainly sold to purchasers who poured into Timmins after the announcement of the Texas Gulf discovery. Those which were not so sold apparently still remain the property of the partnership.

At times it was disclosed that Angus was an associate of Bragagnolo, but at no time during the course of the acquisition and sale of the properties was it ever disclosed that Darke had an interest in the partnership. Darke continued to direct the operations of Texas Gulf, and although there were rumours of his association in the partnership sometime in April or May of 1964, his resignation from Texas Gulf was not handed in until 1st June to become effective on 30th June. The arrangement between these three partners was verbal and originally contemplated the staking of some twenty claims, for which purpose Bragagnolo employed Blackwood, an experienced staker. The original capital was to be twenty-four hundred dollars to three thousand, to be divided equally. Angus testified that he borrowed eight hundred dollars from his mother for this purpose and that Darke's contribution was paid from monies in Darke's account in T. A. Richardson & Co. In fact, the operations of the partnership were extended and, in all, two hundred and forty one claims were recorded. The total expenses of the staking of the two hundred and forty one claims was $6,666.66, and the payment to Angus on his retirement was $60,000 in cash, and $90,000 within a year, for which amount he has not yet received payment and for payment of which, he indicated, he is not prepared to press.

At one time, there was drawn up an agreement, by way of dissolution of partnership, but this was not signed by Darke, and at the time the partners appeared before the Commission it was impossible to determine what were the actual arrangements between the parties.

The activities of Darke, Bragagnolo and Angus, in association in the staking of properties and their subsequent sale, while of great significance in the general

Timmins area, have no direct bearing on the staking or sale of the Windfall claims. One thing of importance, or at least of interest, is that this group through its activities, was able to stake, at a cost of some seven thousand dollars, properties which they later disposed of for an aggregate cash consideration of nine hundred thousand dollars, together with a substantial number of shares in mining companies which had been incorporated for the purpose of acquiring these properties. Due to the two-fold capacity in which Darke acted during this time, every one of the mining claims involved in the operations of this partnership comprised ground which he, alone or in concert with some other officials of Texas Gulf, had already concluded did not warrant further examination. None of these properties had any indication of airborne anomalies, and the only reason for selecting the particular properties was, as expressed by Darke, that they were as close as possible to the discovery area of Texas Gulf: in other words, as he states, it was the nearest available land.

The concealment of the fact that Darke was a business associate of Bragagnolo and Angus in the staking of the claims which were later sold by Bragagnolo on behalf of the partnership, had the effect, whether or not this was intended, of denying to the purchasers from Bragagnolo an important fact with respect to the nature of the properties Bragagnolo was selling. The purchasers from him believed that they were buying properties which Bragagnolo had caused to be staked in the early days of the Timmins staking rush and before all the claims had been picked over. What was not known to the purchasers, nor was any warning given to them concerning this fact, was that the professional judgment which had gone into the selection of the areas to be staked had already rejected as comparatively undesirable, for the purposes of exploration for copper and zinc, properties and mining claims which had been acquired by the partnership and which were being sold by Bragagnolo as his own. It may be said that it was doubtful if, in the light of the buying pressure which existed during the spring of 1964, even the knowledge of this fact would have discouraged purchasers who were anxious to acquire mining claims; but the enthusiasm of some of the buyers might easily have been dampened by the knowledge that the claims offered to them had already been subjected to an examination by the man who discovered the Texas Gulf property, and had been classed by him as inferior to others which he had staked and acquired on behalf of Texas Gulf. Whether or not a disclosure of this fact would have had any discouraging effect on any particular purchaser is impossible to say. But the fact is one, nevertheless, which the purchaser was entitled to know and one which he would have known had it not been that for obvious reasons Darke wished to keep it unknown that he was a partner in the venture and had an interest in the mining claims.

Darke, Larche and Rousseau

Before leaving the subject of the Darke-Angus-Bragagnolo partnership, reference must be made to another association of persons in which the names Darke and Bragagnolo appear. This association is evidenced by a letter dated 17th April 1964 from which it appears that Nedo Bragagnolo, his brother Reno, Kenneth Darke, John Larche and Fred Rousseau had each some interest in a joint venture having to do with the purchase of mining claims from a certain Mr. Stringer. The evidence before the Commission was to the effect that the persons actually entering

into this arrangement were the two Bragagnolos, Larche and Rousseau. Due to the insistence of Nedo Bragagnolo that Darke was his partner in staking operations, and must be accorded a share in any interest he was acquiring, the other parties agreed to the inclusion of Darke's name in the letter. Darke was not aware until sometime later that he had been included in the deal.

A business association between Darke, who was directing the staking operations of Texas Gulf, and Larche and Rousseau, who about the same time became the owners of four mining claims improperly staked by stakers under Darke's directions, warranted investigation.

The circumstances under which the mis-staking occurred demonstrated beyond doubt that it was the result of an error and that, with respect to it, Darke's conduct as a servant of Texas Gulf was not influenced or in any way affected by the inclusion, without his knowledge, of his name as an associate of Larche and Rousseau.

Larche, Rousseau and McKinnon

The mining claims, which have become known as the Windfall claims,[1] twelve in number, were bought from John Larche, Fred Rousseau and Donald McKinnon. The history of four of these claims presents some unusual features which warranted a close investigation.

John Larche and Fred Rousseau had, for ten years, been associated in partnership as prospectors and mining contractors. Prior to 1964, they had, from time to time, helped Donald McKinnon in his staking operations and had discussed "joining forces" with him. McKinnon was principally engaged in the lumber business but had had a long standing interest in mining prospecting.

About the 8th or 10th of April, Larche, Rousseau and McKinnon agreed to stake together some claims in the Timmins area and, as a result of their joint effort, forty mining claims were recorded.

Included in these forty claims, were four in Prosser Township, for which claims had been recorded in the office of the Mining Recorder in Timmins, under the following circumstances.

In carrying out the staking program, which he was directing for Texas Gulf, Darke had employed Edgar Anglehart, an experienced staker on a contract basis. Anglehart, in turn, employed as his assistants Andrew Fournier and Albert Chouinard.

Sometime about 24th February 1964, Darke gave Anglehart instructions to stake four claims, comprising the south half of lot 9, concession I, Prosser; to aid him in locating the property, Anglehart was furnished with a small aerial photograph, showing the adjacent portion of Prosser and Wark Townships. Darke marked on the aerial photograph the location of the desired claims, the south

[1]

TOWNSHIP	LOT	CONCESSION	CLAIM NUMBERS
Prosser	S½9	I	60352-60355
Prosser	N½8	I	58156-58159
Wark	W½7	VI	57685-57688

boundary of which he understood to correspond to a road which he believed to run east and west along the boundary between Prosser and Wark. In reality, this well defined road runs east and west through the centre of lot 9, a fact which was not known to Darke or to Anglehart.

The aerial photograph, along with several marked maps or photos of other areas, constituted Anglehart's instruction; and he, Chouinard and Fournier were set down by helicopter in the immediate vicinity of the property. Anglehart fixed the location of the first post in accordance with the marked aerial photograph and, while he went to some other property to which he had been directed, Fournier and Chouinard completed the staking. On 13th March, 1964, in the office of the Mining Recorder in Timmins, claims, numbers 56596 to 56599 inclusive, were recorded in the name of Chouinard, and were alleged to have been physically located on the south half of lot 9, concession I, Prosser. On 25th March, 1964, transfers from Chouinard to Texas Gulf were recorded.

In the early part of April, sometime around the 8th or 10th, Larche, Rousseau and McKinnon started out on a plan to stake forty claims in the general area of the Texas Gulf property. In the course of their examination, preliminary to their staking, this group became aware that the records of the Mining Recorder indicated that the south half of lot 9, concession I, Prosser, was not open for staking. On 11th April, 1964, McKinnon, who was on his way to stake some claims in the north half of lot 6, concession VII, Prosser, walked easterly along the township line between Prosser and Wark. He was quite familiar with this area because he had opened it up two years previously in his woods operation in that area. As he walked along the township line, he checked it periodically to tie it in with some staking which had been recorded on the north half of lot 10, concession VI. He found the northeast post of this staking but did not find the number 3 post on the claims previously staked on the south half of lot 9. The location of these two posts should have been at approximately the same point. Having staked the claims which he had set out to stake, he returned to make a more careful examination and found that the posts planted by Chouinard and Fournier to mark claims 56596-9 were actually on the north half of lot 9.

That evening, in Timmins, McKinnon, Larche and Rousseau went over their findings with great care and decided that the south half of lot 9 was still open for staking. At about 7 o'clock the next morning, they returned to Prosser Township and staked four claims, numbers 57695 to 57698 inclusive, on the south half of lot 9. They tendered these claims for recording on 13th April and requested that an inspection of the property be made. An inspection order, under section 95 of the Mining Act, was made the same day. After the inspection report was considered by the Mining Recorder, he cancelled the recordings made by Chouinard on 13th March, and the claims staked on the 13th April were recorded as of April 20th. Except to telephone the Mining Recorder, to inquire if there was any way of correcting the mistake, Texas Gulf, the then recorded owner of the claims whose registration had been cancelled, took no action about these claims. Holyk and Darke both stated that they were not greatly concerned, and that their interest in the property had been aroused by its contiguity to some patented land, on which there had been a conductor. They classified the lost claims as being on their list of third

priority. Holyk stated that, in line with their other activities, he would not have offered more than five thousand dollars to acquire these particular claims.

The explanation given by Darke, Anglehart, Chouinard and Fournier, coupled with the visual examination of the area made during the time the Commission was sitting at Timmins, left no doubt that collusion played no part in the ultimate acquisition of these claims by Larche, Rousseau and McKinnon and their availability for sale to Windfall Company. What occurred was an honest and understandable mistake in the staking, by reason of which the desire of Texas Gulf to record these claims had been frustrated.

By 15th April, Larche, Rousseau and McKinnon had completed staking forty claims, 28 in Wark Township, four in Kidd, and eight in Prosser. Their title to the four claims in Prosser staked on 13th April was not assured until the 20th April, but they had every reason to believe that they would become the owners of these claims. Upon the completion of their staking, these three men literally, set up shop in suite 358 in the Empire Hotel, and there Larche and Rousseau met prospective buyers. McKinnon was out of town a great deal of the time and left the sale negotiations to his other two partners.

The first sale which they made was on 15th or 16th April, of four claims in the north half of lot 4, concession I, Kidd Township. Of these, George Monteith was the purchaser. The price was thirty-five thousand dollars cash. These claims were later transferred to Bruce Presto Mines Limited. On 16th April, 1964, a sale of four claims, in the north half of lot 2, concession II, Wark, was arranged, by telephone, with Cuthbert Dickson of Doherty Roadhouse & McCuaig Bros. Later, Fred Ransford signed the sale agreement, on behalf of the purchasers. The price was twelve thousand, five hundred dollars, payable in cash. The claims later became the property of Hunch Mines Limited.

The following day, four claims in the north half of lot 7, concession IV, were sold to Gulf Lead Company, of which Earl Glick was the president. The consideration for this sale was ten thousand dollars cash, and twenty thousand shares of free stock of the company.

Sometime during the week of 13th April, Rennick, a scout for Noranda Explorations Limited, inquired of Rousseau whether the Prosser claims would be available for sale. The exact date of this conversation is not known, though it was sometime between the staking of the claims and the confirmation of the title by the Mining Recorder. Rousseau's reply was that the price would be high, in six figures, and that the vendors would not be interested in a deal which would result in the payment of a large sum in a year or more if a mine were found by that time. What the vendors were interested in, rather, was receiving stock, which might be sold forthwith. Rousseau did tell Rennick that he would have the first refusal, a statement which takes on considerable significance in the light of later rumours as to the desire of the Noranda interests to purchase the Windfall claims.

IV

FINANCING PATTERN

The normal procedure followed in financing a natural resources and development company through the sale of shares from its treasury is described in considerable detail in Appendix A.

For a better understanding of the basic pattern followed in this procedure, and the manner in which it was accommodated to the primary distribution* of the shares of Windfall Company, as well as other companies of which the treasury shares were distributed through the facilities of the Exchange, it is necessary to review briefly the effect of the relevant bylaws, rules and practices of the Toronto Stock Exchange (the Exchange).

When dealing with an industrial or commercial company it is the practice of the Exchange, after primary distribution has been completed, to list only that part of the company's authorized capital which has been issued. As a consequence, even if part of the authorized capital be listed, before any further issue of the shares of such company may be listed, the company must:

a) meet the listing requirements of the Exchange, and
b) file a prospectus with the Ontario Securities Commission

This latter formality is imperative because the exemption from compliance with the prospectus requirements contained in the Securities Act extends to securities which are listed and posted for trading on a recognized stock exchange. Since primary distribution of commercial and industrial shares is not permitted through the facilities of the Exchange, the usual condition for listing is that the shares must have been sold to the public on the strength of a prospectus which has been filed with, and accepted by, the Ontario Securities Commission (The Securities Commission).

In contrast to what prevails with respect to commercial and industrial companies, the Exchange permits the listing of the total authorized capital of a natural resources company upon application by the company and compliance with the pertinent listing requirements.

A natural resources company, or more particularly a mining company, becomes eligible for listing on the Exchange when it has carried on preliminary exploration work by diamond drilling and other such means, so that it is able to provide a report by a competent engineer, recommending a program of shaft sinking or adit construc

*Primary distribution is used in this Report in the commonly accepted sense—the sale to the public of shares which have not previously been the subject matter of a sale to the public by the issuer, or by a vendor who is in a position to sell such shares by reason of an underwriting or option agreement with the issuer. This corresponds roughly to the definition of the term "original distribution" used by the Toronto Stock Exchange. The definition of "primary distribution to the public" contained in the Securities Act is of a broader scope: it extends to some sales which commonly would be described as "secondary distribution", i.e., when the shares sold originate from the holdings of a control group.

tion in order to test the indicated orebody by underground work. In addition, such a company must meet other requirements such as having a minimum number of registered shareholders, minimum cash resources, etc. This stage of development does not insure a successful mining enterprise, and a substantial number of companies satisfy themselves that their properties are uneconomic, after listing and while carrying out programs projected by them at the time of listing. Many of them abandon operations on their properties, and it is not unknown that such a company has ceased to own the property on which underground work was recommended.

No policy as to delisting dormant mining companies has been evolved, and the shares of a considerable number of such companies have continued to be listed. The Exchange has stated that it is unable to develop standards by which to judge which of these dormant companies should be permitted to continue to be listed and which should be denied the Exchange's facilities. In some cases trading in the shares of these companies has been suspended but, from the testimony heard, it is apparent that the conditions necessary to be met in order that the suspension be lifted are much less onerous than the conditions required to be satisfied for listing.

The anomalous result of the application of these rules and practices is that the unissued shares of a dormant mining company (a shell, in common parlance) may be sold to the public by the company, or by an underwriter dealing with the company, through the facilities of the Exchange, without filing a prospectus with the Ontario Securities Commission, at a time when the shares of the company, if they had not previously been listed, would have been ineligible for listing due to inability to meet the minimum listing requirements lad down by the Exchange. True, any option and underwriting agreement entered into, preliminary to the primary distribution of treasury shares, requires the prior acceptance of a filing statement by the Exchange; but the approval for distribution of optioned or underwriting shares, of a company enjoying listing, will be granted at a time when the company's shares would not have been eligible for listing due to the fact that the company had not done sufficient preliminary exploration work on the properties it was then in the course of examining to satisfy the requirements in that regard.

While the case of Glenn Uranium Mines may be an extreme one, it serves to demonstrate what is possible, without infringing any rule of the Exchange, in a situation where the filing of a prospectus was not necessary. The shares of this company had been suspended from trading; a filing statement dated 16th April 1965 was accepted by the Exchange, and the suspended shares were reinstated for trading on 17th April. The filing statement, on the strength of which the reinstatement was accorded, included a balance sheet dated 30th November 1963 which indicated that the company had no fixed assets at that time. On 14th April 1964 the company had agreed to purchase four mining claims in the Timmins Area. These claims had been purchased by the vendor contemporaneously from Ned Bragagnolo and his associates, on whose behalf they had been staked. They constituted the only mining properties in which Glenn Uranium had any interest at that time. No exploration work of any kind had been done upon them, and no personal examination of them had been made by the engineer whose report accom-

panied the filing statement. The report, which was not untruthful as to facts, should have conveyed to the members of the filing statement committee exact knowledge as to the absence of any exploration work. The committee operated in a vacuum of information as to the possible suitability of the properties for any development work until the successful completion of the ground geophysical work which had been recommended. They took no steps to assure themselves that the necessary documents had been completed in order to vest in the company the title to the properties referred to yet the filing statement was accepted.

The result of this acceptance was to authorize the sale, by way of primary distribution, of 1,000,000 shares of the company which had, but three days before agreed to purchase properties of which neither the company, nor the vendor it, had made a personal examination as to the indications of mineral worth: indeed their only claim to value was the proximity of the properties to the site of the discovery by Texas Gulf: proximity in this case being reckoned by a distance of some four miles.

The potentialities of the procedure allowable under the Exchange's practice were fully appreciated by at least some of the people interested in profiting through the financing of mining properties. It was revealed before the Commission that a pattern of operation having several significant features was apparent in the operation of more than one company.

Normally, it would be expected that the quest for public financial support for mining exploration and development would originate with the person who had acquired the property, such as a knowledgeable prospector or an intelligent purchaser. From him, one would expect to receive assurance, founded on a minimal professional examination, that the prospects of success warranted the expenditure of the risk capital sought. He would attract participation by those who, realizing the uncertainty of the type of project in which they were risking their money, would nonetheless be prepared to accept the danger of loss inherent in the early stages of mining development.

In practice, however, the procedure which is not uncommon begins with the activities of one whose chief interest is the promotion of the sale of mining securities. Having acquired sufficient shares of a dormant company whose shares enjoy the advantage of being listed on the Exchange (a shell) as a "vehicle", the promoter seeks and acquires mining properties through the "vehicle". More often than not, this is accomplished through an intermediate purchaser from the property owner. The sale to the vehicle by such intermediate owner (until the practice was stopped by a change of requirement of the Exchange) was usually the occasion for personal profit to the promoter by reason of the mark-up of the price at which the property was sold to the vehicle, over the purchase price paid to the owner. It is true that the intervention of the intermediate owner, if such owner happened to be a member of or associated with the control group of the vehicle, was also used as a means of providing free shares of the vehicle to be turned over to the property owner. The Exchange required that 90% of the shares issued by the purchaser in satisfaction of the purchase price of properties be escrowed shares. If the intermediate owner owned free shares of the vehicle, these could be given to the property vendor and in turn the vehicle would issue escrowed shares to the intermediate

owner. For example: Viola MacMillan transferred to Rousseau, Larche and McKinnon, 250,000 free shares of Windfall Company which she owned and received from Windfall Company when she sold the mining claims to it, 250,000 shares 90% escrowed, in respect of which she had the same voting rights as she would have had as owner of the shares she transferred to Larche, Rousseau and McKinnon.

The mining company (the vehicle) then grants to an underwriter, nominally a member of the Exchange, an option to purchase treasury shares of the vehicle. The usual terms of such an option include a firm underwriting of 200,000 shares and a series of options, at progressive prices.[1]

While the optionee-underwriter named is an Exchange member, in reality the Exchange member acts only on behalf of a principal who is the promoter or a company controlled by the promoter. The promoter, while under firm commitment to pay for only a minimum amount of the shares, is able to compel the sale to him of further shares (usually 800,000) at the prices fixed in the option agreement The maximum amount which the mining company can receive on the exercise of the option is, of course, limited by the prices set out in the option agreement; the amount which the underwriter may receive on the distribution of the optioned shares is in no way limited. Since the optionee is under no obligation to purchase any of the optioned shares, it is unlikely that the option will be exercised unless the price the underwriter can obtain for the shares in the market is in excess of the option price. A further benefit which accrues to the optionee is accomplished by the short sale, before the underwritten shares are available to him, of shares for which delivery will be made from the optioned shares.

The many capacities in which the same person or group of persons may participate in the direction of a company and its financing by the distribution to the public of its shares, is well illustrated by what occurred in early 1964 in P.C.E. Explorations Ltd. (PCE). Table 1 shows the inter-relationship of some of the interested parties.

PCE was a company, four of the five directors of which were partners in the brokerage firm of Doherty Roadhouse & McCuaig Bros. The fifth and managing director was Murray Watts, who was also the president of the Watts Griffis & McOuat Ltd. mining engineering consultants.

On the evening of 7th April, 1964, Murray Watts went to Timmins to look for and acquire mining claims for PCE. On 8th April he made, verbally, a deal with Nedo Bragagnolo for the purchase of 12 mining claims. For these, Bragagnolo was to receive $20,000 in cash, 200,000 free shares of PCE, and was to have a 50% participation in a projected underwriting and option agreement for PCE shares.

Murray Watts reported the particulars of the deal by telephone to D'Arcy Doherty, the president of PCE, and one of the partners in Doherty Roadhouse & McCuaig Bros. On the morning of 9th April, Murray Watts left Timmins believing that the purchase he had arranged would be carried out according to the terms that he had settled, and went immediately to New York via Toronto.

A draft Filing Statement, under date 8th April, bearing the signatures of D'Arcy Doherty and N. E. Phipps on behalf of PCE, was submitted to the Ex-

[1]Appendix A. "Summary of the normal procedure followed by a Mining Company when financing through sale of Treasury Shares".

TABLE 1

RELATIONSHIP OF PERSON INVOLVED IN PCE EXPLORATIONS LIMITED

The Acquisition of Its Mining Claims and Its Financing

NAME	Doherty Roadhouse & McCuaig Bros.	P.C.E.	Mine Securities Limited	Speculative Investments Limited	Watts Griffis & McOuat	Comments
D'Arcy Doherty	Partner	President				Signed Filing Statement 1060 as officer of PCE and underwriting broker
D. B. Bannerman	Partner	Director & Treasurer				
J. W. Cochran	Partner		President			
W. H. Jacobs	Partner		Director & Sec.-Treas.			
John M. Rogers	Partner	Director	Director			
Murray Watts		Vice-President and Managing Director			Associate	Underwriter as to 25%
A. T. Griffis		Consulting Engineer			Associate	Signed report attached to Filing Statement 1060
J. McOuat				Director	Associate	Director of Company which was underwriter as to 75%
B. Anderson	Manager Timmins office					Received finder's fee paid by PCE

change. In it, the purchase price was set out as $20,000 in cash and 400,000 shares of PCE; the names of the vendors to PCE of the 12 claims were given as Nedo Bragagnolo and John Angus, the latter being the manager of the Timmins office of T. A. Richardson & Co. This draft Filing Statement disclosed also that Doherty Roadhouse & McCuaig Bros. were seeking approval of an underwriting and option agreement with respect to one million shares of PCE, and that they were acting as to 50% on behalf of Speculative Investments Ltd., as to 25% for Bragagnolo and Angus, and as to 25% for Murray Watts.

Speculative Investments Ltd. was a company, one of the directors of which was John McOuat, a professional associate of Murray Watts.

Filing Statement No. 1060, dated 8th April, 1964, was filed with the Exchange as of 9th April, 1964, and indicated that the same 12 mining claims had been purchased by PCE from Mine Securities Ltd. for $73,000 in cash and 200,000 escrowed shares of PCE. This price was said to be the same as that at which Mine Securities Ltd. had bought the claims from Bragagnolo and Angus.

Mine Securities Ltd. was a company of which the officers and directors were

all partners of Doherty Roadhouse & McCuaig Bros. It was alleged that Mine Securities Ltd. was interjected into the transaction in order to provide to Bragagnolo and Angus free shares of PCE which they had insisted on receiving.

In Filing Statement No. 1060 it was stated that Doherty Roadhouse & McCuaig Bros., as underwriters, were acting on behalf of Speculative Investments Ltd. as to 75%, and as to Murray Watts as to 25%.

The engineer's report which accompanied the Filing Statement was signed by A. T. Griffis, a professional associate of Murray Watts, and John McOuat.

The change in the cash payment from $20,000 to $73,000 was the result of a re-negotiation of the deal for the purchase of the properties which had taken place after Murray Watts left Timmins on the morning of 9th April.

From the records of the Exchange, it was impossible to determine accurately the hour, or even the day, when any of the above documents reached the Exchange; but it is perfectly obvious that Filing Statement No. 1060, despite its date, could not have been prepared until after the re-negotiation of the purchase, which re-negotiation could have taken place no earlier than 9th April. From the evidence adduced, it appeared that the Exchange did not approve the Filing Statement No. 1060 until 10th April. Consequently, the Exchange's approval to the purchase of the claims and to the underwriting and option agreement could not have been effectively given until this later date.

On 8th April, Doherty Roadhouse & McCuaig Bros. sold 549,000 shares of PCE, and on 9th April a further 253,000 shares of PCE. Admittedly these sales were short sales against the option. As a result of this, 802,000 of the million shares which were the subject matter of the underwriting and option agreement, were sold by way of primary distribution before the underwriting and option agreement had been approved by the Exchange.

The total sales, the sales of the underwritten and optioned stock, and the price range for each of the days 7th to 10th April, are as follows:

DATE	TOTAL SALES	SALE OF UNDERWRITTEN STOCK	PRICE RANGE
April 7th	11,000	nil	
April 8th	1,181,000	549,000	13 - 29c.
April 9th	1,923,000	253,000	33 - 53c.
April 10th	1,061,545	35,000	42 - 57c.

It was by means of this procedure that the MacMillan group were able, during the month of July, to distribute to the public buyers 953,100 shares of Windfall Company for an aggregate consideration of over $1,900,000 (at an average price of $2.06), for which the optionee paid $490,000 into the treasury of Windfall Company.*

This pattern of financing has certain implications which cannot be disregarded when considering the primary distribution of shares of a speculative mining company.

*See Table 8.

The minimum price payable to take up shares under such an option and underwriting agreement is fixed by applying to the market price of the shares, at the date of the agreement, a discount according to the scale adopted by the Exchange.[1] The price at which each subsequent option is exercisable is successively higher than that at which the preceding option was exercisable. In order that the optionee may recover the price payable to the issuing company together with his costs, and also have some margin of profit for himself, the market price of the optioned shares must advance during distribution. If the optionee succeeds in bringing about a really substantial increase in the market price, no corresponding benefit will result to the issuing Company, since the amount it will receive has been fixed in relation to the market price prevailing at the date of the granting of the option. It is the optionee's profit which rises with the increase in market price.

If the prices which an optionee had to pay were related to the market price at the time of the exercise of the option, averaged over a sufficient period of time to overcome the influence of any manipulative transactions, there would be less incentive to bring about an increase in price, and the issuing company would participate in any increased price which did occur.

When money is sought from the public for exploratory work on an unproven property, it is the gambling instincts of the buyer to which the optionee most commonly appeals.

The buyer is looking for a profit as high as possible and does not want to wait for it any longer than he must. The desire for a rapid profit increases the public interest as drilling begins on the property, since, at this stage, the buyer will soon know if he is to be successful: and, while a negative result may not rule out the possibility of success, a drill core exhibiting high percentages of metals over a substantial length will be sufficient to engender the kind of frenzied buying at rising prices that follows when a new mine is believed to have been indicated.

Hence, the most opportune time for the disposal of optioned shares comes at the start of the drilling programme and continues as the drilling progresses. Accordingly, the timing of the optionee's efforts to bring about public buying and an increase of price will relate to the time of the actual drilling.

The market conditioning which took place in June, and the start of the actual drilling, made the early part of July an opportune time for the distribution to the public of the shares of the Windfall Company under option. The incentives to make the most of the situation were threefold: first, the direct financial advantage to the Windfall Company which would receive the money necessary to explore and

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1 TORONTO STOCK EXCHANGE CIRCULAR 5

The initial price of an underwriting should be not more than the following discount from the market:

To 15¢ and up to 50¢	25%
51¢ and up to 1.00	20%
1.01 and up to 2.00	18%
2.01 and up to 5.00	15%
Above 5.00	10%

There shall be at least a 5¢ spread provided between each space range up to 50¢, at least 10¢ spread from there to $1.00, and at least 25¢ thereafter.

examine the Timmins property; second, the indirect advantage to George and Viola MacMillan due to the control of the Windfall Company having in its treasury a sum considerably larger than that which was required for the exploration of its properties*; and third, the substantial direct financial advantages which accrued to the underwriters and to those associated companies through which the resale of underwritten stock was effected.

The comparative benefits accruing to the treasury and the underwriter of each of four companies prominent in the Timmins area in the first half of 1964 are set out in Table 2.

TABLE 2

COMPARISON OF BENEFIT TO COMPANY AND UNDERWRITER

		Bunker Hill Extension Mines	PCE Explorations Limited	Glenn Uranium Mines	Windfall Oils & Mines Limited
TIMMINS PROPERTIES STAKED	1.	27–28 Jan.	28–30 Jan.	31 Jan.	11–12 April
	2.	1 Feb.			
AGREEMENT OF SALE TO COMPANY	1.	3 Mar.	10 April	14 April	22 April
	2.	12 May			
PRICE TO VENDORS:					
Cash	1.	$10,000.00	$73,000.00	$20,000.00	$100,000.00
	2.	$20,000.00			
Shares	1.	50,000	200,000	400,000	250,000
	2.	400,000			
UNDERWRITING AND OPTION AGREEMENT PAID TO COMPANY	1.	18 Feb.	8 April	14 April	17 April
		400,000 @ 10¢	400,000 @ 20¢	300,000 @ 20¢	100,000 @ 40¢
		200,000 @ 15¢	200,000 @ 25¢	100,000 @ 20¢	100,000 @ 40¢
		200,000 @ 20¢	200,000 @ 30¢	200,000 @ 25¢	200,000 @ 45¢
		200,000 @ 25¢	200,000 @ 35¢	200,000 @ 30¢	200,000 @ 50¢
				200,000 @ 35¢	200,000 @ 60¢
					200,000 @ 70¢
	2.	25 Mar.	16 April		
		200,000 @ 30¢	100,000 @ 75¢		
		200,000 @ 30¢			
		200,000 @ 35¢			
		200,000 @ 40¢			
		200,000 @ 45¢			
	3.	20 April			
		100,000 @ 60¢			
TOTAL PAID TO COMPANY		$580,000.00	$335,000.00	$260,000.00	$ 530,000.00
PROFIT TO UNDERWRITER ON RE-SALE OF ABOVE SHARES		$277,146.00	$122,000.00	$331,166.00	$1,456,000.00
MARKET PRICE AND VOLUME (in thousands):					
March	2	359 @ .20½	2 @ .10	—	3.5 @ .35
April	1	188.34 @ .38½	17 @ .10	—	6.5 @ .46
July	2	35.2 @ .27	23.8 @ .35	30.8 @ .19½	38.85 @ .64
July	30	28.05 @ .33	36.1 @ .52	82.1 @ .34	434.47 @ 4.15
July	31	116.6 @ .27	190.65 @ .42	231.3 @ .24	1.371.49 @ 1.04
August	4	50 @ .27	27 @ .40	79 @ .25	450 @ .78

*The benefits accruing from the effective voting control of companies financed by the public sale of stock was also illustrated in the case of Alan Fidler, transcripts pp. 4296-4315, 4493-4509, and Louis Pancer 4509-4532.

V

WINDFALL COMPANY CORPORATE AFFAIRS

Windfall Oils and Mines Limited was incorporated, under the name of Windward Gold Mines Limited, by letters patent dated 18th November, 1946, issued under the Ontario Corporations Act; its corporate powers were those of a mining and exploration company and its authorized capital was 3,000,000 shares. At the time of its incorporation and the listing of its shares on the Exchange, George MacMillan and Viola MacMillan had no interest in it. By supplementary letters patent dated 2nd July, 1957, its name was changed from Windward Gold Mines Limited to Windfall Oils and Mines Limited.

On 5th December, 1961, George MacMillan, acting under the firm name and style of Alexander Prospecting Company, purchased 345,000 shares of its capital stock for $67,701.56 Canadian funds. Loans from the Canadian Imperial Bank of Commerce and the Royal Bank of Canada provided funds for this purchase.

Shortly after these shares were acquired, the board of directors was reconstituted to be composed of George MacMillan, Ronald Mills, Marjorie Oliver (now Humphrey), Doris Drewe, and T. F. C. Cole, Q.C. None of these directors, other than George MacMillan, had any actual beneficial interest in the company; they were nominees of George MacMillan and Viola MacMillan. T. F. C. Cole, Q.C., a member of the legal firm which acted as the Windfall Company's solicitors, was appointed secretary and held that post throughout the whole period under review. The excellent manner in which the corporate records were kept was due to his efforts and provides a sharp contrast to the manner in which the affairs of other controlled companies were treated; it is worthy of note that Mr. Cole is one of the few people in any way connected with the Windfall Company who did not at any time buy or sell shares of its capital stock. Ronald Mills was a farmer by occupation, living near the MacMillan country home, and was employed off and on as a farm labourer at the MacMillan's. Mrs. Humphrey, a journalist and a close personal friend of the MacMillans, had no previous experience in mining, although she felt that her professional qualifications were of some assistance to the company in its public relations. Miss Drewe, who had been in the employ of the MacMillans personally from 1941 to 1960, and had been the assistant secretary of the Prospectors and Developers Association, stated that she had been on and off the boards of various companies which the MacMillans controlled. None of the directors, other than Mr. Cole, exercised any independent judgment in the affairs of the Windfall Company; and all except him considered themselves bound to support the views of George MacMillan and Viola MacMillan.

On the 15th March, 1963, Alexander Prospecting Company sold to Viola MacMillan 300,000 shares of Windfall Company at 19c a share for a total consideration of $56,943.

Windfall Company entered into an underwriting and option agreement with Moss Lawson & Company on 27th June, 1962. In this transaction Moss Lawson & Company were acting not in their own behalf, but as agents for Variometer Surveys Limited (Variometer) as to 25% and for Golden Shaft Mines Limited (Golden Shaft) as to 75%. The terms of the agreement were those normal to such an agreement and provided for the purchase outright of 200,000 shares at 15c and for options on 4 blocks of 200,000 shares each at prices ranging from 15 to 30c. Filing statement 760[1] dated 28th June, 1962 with respect to this agreement was accepted by the Exchange.

Prior to the trip MacMillans made to Timmins on 18th April, steps had been taken to secure the approval of the Exchange to a further underwriting and option agreement. The purpose of this, according to filing statement 1081[2] filed with the Exchange on 22nd April, was to provide funds to acquire an exploration option on properties in Tiblemont, Senneterre, Quebec, and Loveland Township, Ontario. Moss Lawson & Co. were again the optionees, but in this transaction were acting for the account of Variometer and Golden Shaft in equal shares. This agreement provided for the purchase of 100,000 shares at 40c and for options on an additional 900,000 shares at prices of 40 to 70c. Generally the terms of this agreement followed the normal pattern and included an acceleration clause by the operation of which the advance in the market price which occurred on 6th July compelled the optionees to take up the entire 900,000 shares or forfeit their option.

On 22nd April, 1964, Viola MacMillan, as the purchaser of the 12 Windfall claims from Larche Rousseau and McKinnon, personally present by invitation, at a directors' meeting of the Windfall Company, offered to sell the 12 claims to the Windfall Company for $200,000 in cash, 300,000 shares of the capital stock of Windfall Company, and the payment of a royalty calculated on the tonnage of profitable production. The directors on the same day accepted the offer, and an agreement between Viola MacMillan and Windfall Company was executed. Immediately thereafter, the Windfall Company submitted to the Exchange an amending Filing Statement No. 1081 in which were set out the particulars of the agreement of 22nd April, 1964.

The Exchange refused to approve and accept the amending filing statement, as submitted, on the grounds that the agreement did not conform to the requirements of the Exchange, in that the price to be paid to the vendor was in excess of the price she had paid for the properties pursuant to the agreement of 18th April. There ensued some rather bitter negotiations extending over a period of weeks, during which several alternatives were proposed and rejected.

Since the Exchange remained adamant, the agreement of 22nd April was revised in due course to provide for the following reduced consideration: $100,000 in cash, 250,000 unissued shares of the Windfall Company of which 90% were to be escrowed, a royalty at the rate of 5¢ per short ton of ore grading less than $10 and 10c per short ton of ore grading more than $10 and an option to purchase 200,000 shares at a price of 58c to be exercisable only when an independent geologist

[1]Exhibit 373
[2]Exhibit 107

would state that, in his opinion, an ore body aggregating 2 million tons had been discovered. As a requirement for its approval, the Exchange insisted that the agreement should be submitted for the approval of the shareholders, and that at such meeting the shares owned, or controlled by, George MacMillan or Viola MacMillan should not be accorded a vote. The required meeting was duly convened on the 15th June, 1964, and voted the necessary approval.

On 7th July, 1964, a meeting of the directors of the Windfall Company was held. George MacMillan did not attend this meeting, but Viola MacMillan presented to it a handwritten statement,[1] dictated to her by George MacMillan, which formed the basis of the public release authorized by that meeting.

Following the demand made on 10th July, 1964, by the Exchange, a further meeting of directors was summoned for the 13th July. This meeting was held at Mr. Cole's office. The directors were kept waiting in an anteroom from 9 o'clock in the morning until 12 noon, when the meeting was convened. A letter which had been prepared for delivery to the Exchange was read to the directors and approved by them, although they had had no part in its preparation. This meeting occupied no more than five minutes.

A further meeting of directors was convened on 30th July to receive the results of the assays which had been forwarded by mail from Swastika Laboratories Limited. Dr. Ambrose was in attendance at this meeting and prepared to give his advice as consultant on any technical matters arising out of the assays. The envelope in which the assays had been dispatched from Swastika was first opened at this meeting. The meeting was informed of the completely negative results, and a further statement[2] was prepared, but its release was delayed until after the close of the market in Vancouver.

In addition to exercising substantial control of the Windfall Company, George and Viola MacMillan controlled other companies. The names, percentage of control, and the date of the last meeting prior to July, 1964 are as follows:

1. Airquests Limited — 100% controlled — Last directors' meeting prior to July, 1964: June 6, 1960.
2. Consolidated Golden Arrow Mines Limited — 44% controlled —Last directors' meeting prior to July, 1964: June 28, 1963; May 26, 1964.
3. Golden Shaft Mines Limited — 69% controlled — Last directors' meeting prior to July, 1964: December 1, 1953.
4. MacMillan Prospecting & Development Limited — 100% controlled — Last directors' meeting prior to July, 1964: July 11, 1960.
5. Variometer Surveys Limited — 97% controlled — Last directors' meeting prior to July, 1964: April 13, 1960.
6. Vianor Malartic Mines Limited — 59% controlled — Last directors' meeting prior to July, 1964: December 13, 1961.

It is not necessary to go extensively into the corporate affairs of these companies; except in the case of Consolidated Golden Arrow Mines Limited, the affairs

[1]Exhibit 85. See footnote, page 36.
[2]Exhibit No. 87, Windfall Company statement July 30, 1964.

of these companies in the period under review were treated as the personal concern of George and Viola MacMillan. No attempt was made to keep up even a semblance of management by the directors, and many important decisions were not even recorded in the directors' minutes. In the case of Golden Shaft and Variometer, these included the underwriting and option agreements covering two million shares of Windfall Company. No corporate authority for the opening of brokerage accounts was given by these companies, and the manner in which Viola MacMillan directed transactions in various brokerage accounts appears to have been the subject of no action by the directors. This is borne out by the fact that a number of the brokerage houses through which trading in Windfall shares was carried out did not have authority on file, from any of the companies in whose names accounts were maintained, to accept orders from Viola MacMillan.

Time and again during the course of the enquiry, Windfall Company was referred to by Viola MacMillan as "our company". This well indicates the attitude toward the Windfall Company that George and Viola MacMillan displayed by their conduct. The whole undertaking of the Company was a personal venture, which was carried out with a disregard for the interests of others who had become associated in it by reason of having become shareholders or directors. This is further illustrated by the fact that, although Viola MacMillan exercised complete control of the corporate and market aspects of the companies controlled by her husband and herself, she held no office or administrative post of authority in the Windfall Company.

The treatment of Marjorie Humphrey and T. F. C. Cole, Q.C., two of the directors of the Windfall Company, shows the complete disregard with which the directors and shareholders were treated. T. F. C. Cole, Q.C., an experienced lawyer whose advice, had he been completely informed of all the facts, would have been of real benefit to the Windfall Company, was deliberately kept in the dark. He was not told that the core contained no copper and zinc; he was not told that Dr. Ambrose had been brought to Toronto to view the core; he was not told that assays of any part of the core had been made and the results made known to Viola MacMillan. Had he been fully informed as to these matters, as he should have been, the statement released by the Company on 7th July would have been a different one, as he has testified. It seems fair to assume that George and Viola MacMillan did not want to risk facing what he would have insisted upon if he had been able to make a decision based on full possession of all the known facts.

On 6th July, Mrs. Humphrey, whose curiosity had been aroused by the trip Viola MacMillan had made to Timmins, came to Toronto from her residence in Troy, Ontario. Not being able to locate either George or Viola MacMillan, she went to 303 Oriole Parkway, where she met Ronald Mills, who told her that he had accompanied Viola MacMillan to Timmins, and that some core had been brought back.

At this point Viola MacMillan arrived, and in response to Mrs. Humphrey's question, "What about the core?" replied, "We are to keep quiet and say nothing."[1]

[1]Transcript—page 1589, lines 5-6.

This was not the only fruitless attempt to get information Mrs. Humphrey made that day.

At the meeting of directors of Windfall Company, held the following day, George MacMillan was not present; but Viola MacMillan, who was not a director, was present, and apparently controlled the conduct of the meeting. This was the occasion when Viola MacMillan presented to the meeting a handwritten statement which George MacMillan had dictated to her earlier that day. Mrs. Humphrey kept pressing Viola MacMillan for information about the core, but the only answer she received was, "We can't talk."[2]

Mrs. Humphrey was another director who could have contributed something to the Windfall Company in those days. While she had no experience in mining or mining finance, her journalistic experience gave her a better than ordinary orientation with regard to public opinion and the necessity of being frank.

But Mrs. Humphrey was not only denied the information which she sought in regard to the core; she was also kept in ignorance of Dr. Ambrose's visit to Toronto and of the fact that the results of the assays of two small sections of the core had been given to Viola MacMillan on 6th July. She was not asked to take any part in the preparation of the press release of 7th July; on 13th July she was kept waiting in Mr. Cole's office for three hours until the meeting to which she had been summoned was finally convened. Thereupon, a statement which had been prepared from the notes dictated by George MacMillan was placed before her for perfunctory approval.

Even if one is prepared to accept the contention put forward that there were reasons why the MacMillans' information that the core was worthless should not have been given to the public, the conduct of George MacMillan and Viola MacMillan in keeping from the directors of the Company knowledge of such essential matters offends every element of company law. Release of information to the public was one matter upon which Mrs. Humphrey's judgment would have been more disinterested than the MacMillans' and based on a more accurate appraisal of the facts than that of the other directors; but the Company was denied the benefit of this advice which it was entitled to have. This conduct brings home more forcibly than anything else a realization of the manner in which the MacMillans looked upon all companies with which they were connected as personal activities, to be conducted as they saw fit.

Another feature which was noticeable in the conduct of the business of the Windfall Company was that Viola MacMillan had no corporate office or position of authority in that Company, although she was a large shareholder. Save with respect to the actual mining development work on the property, all the actions of the Windfall Company appear to have been inspired by, and carried out under the direction of, Viola MacMillan. Attempts were made in the testimony of George MacMillan and Viola MacMillan to give the impression that there was not always unanimity in their views. Despite this, it was abundantly apparent that the purchase of the Windfall properties, the negotiations with regard to the underwriting

[2]Transcript—Page 1590, line 1.

and option agreement, the actions of the Windfall Company with regard to the release of information, and the direction of all market operations of all the related companies which were controlled by the MacMillan interests, as well as the operation of the individual accounts which Viola MacMillan directed, came about as a result of decisions which Viola MacMillan made, and that George MacMillan either concurred in all the decisions or, by his acquiescence and acceptance of the results, indicated his concurrence. It was equally clear that, while George MacMillan was the one principally responsible for the direction of the work on the claims, Viola MacMillan was fully informed of what was taking place and did interject herself into the affair. As far as responsibility for anything done by either of them with respect to Windfall Company and the trading of its shares, that responsibility must be borne by both of them.

VI

PROPERTY ACQUISITION

On 18th April 1964 George MacMillan and Viola MacMillan arrived in Timmins. Sometime during the day of their arrival, Viola MacMillan told Gregory E. Reynolds, a reporter for the Timmins Daily *Press*, that she was going to make a property deal that night. About the same time, R. J. Roberts, a reporter for the Toronto *Telegram*, met the MacMillans who told him they were trying to get a property for Windfall Company.

During the latter part of the afternoon, the MacMillans entered the suite occupied by Fred Rousseau and John Larche, to discuss the purchase of mining claims. In the course of these discussions, George MacMillan mentioned some data which he had on maps which he had brought with him, and Larche accompanied him to his room while he got the maps. On their return to the Larche-Rousseau suite, discussions continued and it was indicated that the MacMillans had a particular interest in the area comprised in the claims which had been restaked after Texas Gulf had lost them. Negotiations were interrupted while Viola MacMillan went to Schumacher to attend a dinner being given for the Select Committee on Mining. She returned later in the evening, and about one-thirty in the morning the vendors sent for their solicitors to prepare a document to carry out the deal which had been arranged.

The document as signed by Viola MacMillan as purchaser and Rousseau and Larche as vendors related to claims P 57685 to 57688 inclusive, P 58156 to 58159 inclusive, and P 60352 to 60355 inclusive. The vendors were to receive one hundred thousand dollars along with two hundred and fifty thousand free and negotiable shares of Windfall. Company. The cash consideration was payable twenty-five thousand dollars on the delivery of the transfers of the property, and seventy-five thousand dollars thirty days thereafter.

At the insistence of the vendors, the purchaser agreed that the claims to be sold should be optioned to Windfall Company within thirty days. The vendors testified that they insisted that the claims should ultimately become the property of the Windfall Company, in which they were to receive free shares, in order that they would be able to benefit from any enhancement in the value of the shares they were to receive which might be brought about by the acquisition by Windfall Company of the mining claims concerned.

Under date of 22nd April 1964, a Memorandum of Agreement was signed by the parties and it stated in part: "This Memorandum is entered into by the parties for the purpose of being filed with the Mining Recorder in Timmins, Ontario, on the record of the mining claims to serve as a notice of the interest of V. R. MacMillan in the aforesaid claims". The Memorandum recited the agreement of 18th April 1964 to which it referred as an agreement whereby Rousseau and Larche did sell the claims to be optioned to Windfall Oils and Mines Limited.

It is difficult to escape the conclusion that in the purchase of the claims Viola MacMillan and George MacMillan (the latter being a director and president of

Windfall Company, of which the former was a substantial shareholder in her own right, as well as having a substantial interest in one or more of its corporate shareholders) directed their activities to the acquisition of properties which, despite the actual wording of the documents, they intended Windfall Company ultimately to own.

On 22nd April 1964, at a meeting of the directors of the Windfall Company at which Viola MacMillan was personally present "by invitation", those attending were informed that the property had been acquired by Viola MacMillan and was being offered to the Company for a consideration which entailed the cash payment of two hundred thousand dollars, the delivery of three hundred thousand shares of the Windfall Company and the payment of a royalty to the vendor based upon the tonnage and the value of the recovery of that tonnage from the property.

A filing statement on a form of the Toronto Stock Exchange, amending filing statement 199, was prepared in which the details of this acquisition were set out and the same was submitted to the Stock Exchange.

As Viola MacMillan had been warned by Donald Lawson of Moss Lawson & Co., the Exchange refused to approve this purchase as it was not at the price at which the claims had been purchased by her. After protracted negotiations the Exchange agreed to approve revised terms of purchase provided that the terms were approved by a special meeting of the shareholders of Windfall Company at which George MacMillan and Viola MacMillan would refrain from voting.

The terms which were contained in the final agreement gave the following compensation to Viola MacMillan.

(i) $100,000 and the expenses of the acquisition of the properties.

(ii) 250,000 shares of Windfall Company 90% escrowed.

(iii) a royalty on mineral products at the rate of 5c. per ton of ore grading less than $10 per ton and 10c. per ton of grading $10 or more per ton.

(iv) An option on 200,000 shares at 58c. exercisable when ore borders in excess of 2,000,000 ton established.

Amending filing statement #199 dated 22nd May 1964 was accepted for filing on 29th May 1964.

The required approval of the shareholders was voted at a meeting held 12th June 1964.

An interest in acquiring an adjacent patented property, N½ lot 9 concession I Prosser before its price was affected by the results of the work on the Windfall claims, was advanced as a reason for withholding from the public information as to the mineral content of the drill core. It is true that discussions of a preliminary nature had taken place between Viola MacMillan and one of the owners, but there are two reasons for not accepting this contention seriously—first, the effort to acquire the property was not pursued with that diligence which would have marked a serious attempt to buy it; second, the disclosure of what was known to George and Viola MacMillan about the drill core would more likely have had the effect of reducing, rather than increasing, the price that would have had to be paid for the adjacent property.

VII

PROPERTY OPERATION

The Province of Ontario aerial survey map number 299G dated 1956 (Ex. 52), indicated an electromagnetic anomaly on the Prosser claims which had been purchased by Windfall Company. After the company bought these properties, aerial survey maps were purchased from Keevil and the services of Dr. S. S. Szetu, a consulting geophysicist, were retained.[1]

In the early part of 1964, Dr. Szetu had done work for Windfall Company in other areas. His records indicate that from 9th May to 30th June 1964, he was engaged in camp building and in conducting a geophysical survey on the Windfall claims. His report on the geophysical work he had done was dated 30th July 1964, and was delivered after that date, but the gist of it was conveyed to George and Viola MacMillan as the work progressed. Prior to going on the property, Dr. Szetu discussed its geology with George and Viola MacMillan from government maps which were available.

Until 9th June, the employees on the property were engaged in building a camp and line cutting, that is, clearing the trees and brush for paths approximately two to three feet wide at one hundred foot intervals. The ground survey work began 9th June, the actual person in charge being Monty Hall. Hall did an electromagnetic survey with a Pronka MK. IV unit, and Brazeau did a magnetometer survey. Accompanying Hall as his helper was Dennis Lavalle, who carried the transmitter portion of the unit, the batteries. The original examination, using a two hundred foot cable, was unproductive; but when the cable length was increased to three hundred feet the results enabled Dr. Szetu, from the readings from the instrument, to determine the location of an underground conductor and to fix the site and direction of the drill hole. About the time the cable length was changed, Dr. Szetu was in Toronto and was shown maps by George and Viola MacMillan indicating the airborne conductor. From these maps, he discovered that the airborne conductor indicated was not strong, and he was not surprised that the methods he had been using had not picked it up. According to his view, the airborne indication on the Windfall claim placed that conductor as one of the fourth order.

On 28th June, Dr. Szetu indicated on a map the location for a drill hole with the designation "D. H. No. 1, forty-five degrees, five hundred and fifty feet." He explained this legend to mean that his recommendation was that the no. 1 drill hole should be located at the designated point, should be drilled at an angle of forty-five degrees, and should be drilled to a depth of five hundred and fifty feet in order to traverse the anomaly. A hole drilled to this depth, in his view, would take the drill hole across the conductor. It was his calculation that, at the conclusion of

[1]See Appendix A—Role of the Geologist and Geophysicist in Mineral Exploration.

the five hundred and fifty foot drilling, the drill would have reached a point 400 feet, measured vertically, below the surface of the ground. He also calculated that the drill would enter the conductor after about four hundred feet of drilling.

Sometime well in advance of the end of June, Bradley Bros. Limited, a diamond drilling company which previously had done work for George and Viola MacMillan, had been verbally requested to reserve a drill and crew for the work expected to be done on the Windfall claims. A contract in the form supplied by Bradley Bros. Limited (Ex. 70) was signed on the 20th day of June 1964, and called for 5000 feet of drilling, under contract conditions normal to such an arrangement. As required by Bradley Bros. Limited, the crews in charge of any drilling project make daily reports on a form provided for that purpose. Exhibit 39 contains thirty-five such daily reports from which Edgar Bradley was able to give, in general terms, the activities of the employees on the property.

According to his testimony, given with the aid of these slips, on 25th June a drilling machine was moved to the end of the truck road; the three employees engaged were G. Guay, V. Lance and F. Lance. On the 26th and 27th of June, the same employees, together with St. Onge and R. Dufresne, were engaged in further moving the equipment. On 28th June, the crew's time was devoted to setting up the tripod and taking fire precaution measures around the camp. The men spent 30th June in cutting a road down to the creek, moving in the pump and connecting the water line. About 1st July 1964 the actual work of drilling commenced.

At this time Guay left the property (his particular specialty was setting up the camp), and the drilling proceeded with two shifts of drill crews and one cook. The day shift, composed of the two Lances, worked from seven a.m. until five or seven p.m.; the night shift, composed of Boucher and Dufresne worked from seven p.m. until the following morning. Each shift had the services of a core grabber who was an employee of Windfall Company rather than of the drilling company. The actual drill site was about a mile from the camp buildings and the crew were provided with a tractor which moved men and supplies back and forth, and brought the core boxes, containing the core taken from the drill hole, from the drill site to the camp site. Drilling continued from the 1st July, wtih only the interruptions occasioned by mechanical failure, until the end of the night shift which had begun work on the evening of Saturday 4th July. The number of feet drilled during each shift and the depth reached at the conclusion of the shift indicated in Table 50.

On 3rd July, by 7 p.m. the drill had gone down some three hundred feet and had not encountered any material which would account for the conductivity indicated by the geophysical survey.

George MacMillan left the property at this stage and returned to Timmins, from where he telephoned Dr. Szetu and reported the negative results. Dr. Szetu pointed out that his estimate of three hundred feet had been vertical depth and that, since the drill was directed at an angle forty-five degrees from the vertical, it would require some four hundred feet of drilling in order to reach the conductor. He told George MacMillan to go another hundred feet and he would hit it.

When George MacMillan returned to the property on the morning of 5th July, he was informed that, during the night shift, which had just concluded, the sludge had turned black, that being an indication that the drill had entered the conductive material which would be either sulphides or graphite. The drill was allowed to continue, and the day shift and the night shift were completed, at which time the depth of the hole was five hundred and seventy feet.

No drill crew started the day shift on 5th July. On the morning of Sunday, 5th July at about 6:30 a.m., Edgar Bradley, who was in charge of the drilling operations in the Timmins area, met both the MacMillans outside their hotel as they were about to get into their car. Edgar Bradley was informed that the drill might be stopped or he was asked if it would be all right to stop the drill and he replied that it was all right with him. Bradley then informed the MacMillans that they were to tell his men on the job whatever they decided to do. Bradley was later informed by his men that under instructions from George MacMillan the drill had been shut down without any further drilling having been done beyond the depth of 570′.

On the following day, 6th July, Edgar Bradley received a call from either George or Viola MacMillan stating that a core shack was to be built right away. He replied that it would take a couple of days to get his men to build it, and he was instructed to go ahead.

On 10th July, Edgar Bradley received a telephone call from Viola MacMillan requesting him to dispatch a telegram, the contents of which she dictated to him over the phone. As a result of these instructions, he sent a telegram, (Ex. 71) to which more detailed reference will be made later.*

Edgar Bradley's record indicates that 15th July was the last day on which his crew were engaged in building the shack, and that on the 16th his crew were standing by, waiting for instructions. On the afternoon of the 16th, Bradley received a call from Viola MacMillan advising him to do some extra work in the camp and bunk house. The drillers' timesheets indicate that the crew were standing by on the 17th, but that drilling was recommenced on the morning of the 18th and continued to the 23rd and to a depth of 863′. No night shift was worked on the 18th or 19th.

No further drilling was done on the no. 1 drill hole, and further drilling on the Windfall claims in 11 other holes gave no indications of minerals in commercial quantities.

*See footnote page 62.

VIII

THE DRILL CORE

"What is in the Windfall drill core?" everyone wanted to know. While the uncertainty was allowed to continue, many acted on what they believed. An exact and reliable answer at any time would have ended the market activity forthwith, just as it did on 30th-31st July. It may be of assistance, in assessing the opportunity various people had to gain any knowledge about the core, to trace it from the beginning of drilling.

A log[1] was prepared from data obtained through an examination of the core made by Dr. B. S. W. Buffam on 6th October. At this time the core was in the physical custody of the Northern Trust Company at Timmins, where it had been lodged by the authority of the Securities Commission. Dr. Ambrose, representing the Windfall Company, was present during the time Dr. Buffam was making his examination.

Dr. Buffam is a mining engineer of wide experience who was retained as consultant to the Commission. His log corresponded with the one Dr. Ambrose made on 22nd July[2] save in one particular. Dr. Buffam's log disclosed the rock structure in one area as andesite, while Dr. Ambrose's refers to the same area as rhyolite breccia. Regardless of this difference, the contact, the part most likely to give evidence of any copper or zinc ore, occurs according to both logs at $\pm$359′.

Neither log discloses the presence of any mineral in commercial quantities. Both logs agree that the change from unbrecciated andesite to brecciated material occurs in the vinicity of 340′ to 359′ and that the section at 420′ would be considered the beginning of the conductive material. The conductive material is graphite.

George MacMillan was periodically at the Windfall claims from the time the drill started until noon on 5th July. The drill being used was equipped with closed barrels which would generally conceal the core until it was removed from the barrel. When the drill was raised from time to time to remove the core, the lower four to five inches of the core would protrude from the barrel and be visible to the drillers or anyone else in the immediate vicinity. The drillers were also able to see the sludge (fine ground rock mixed with water brought to the surface by the force of the water pump into the hole).

When the core barrels containing the drill core were removed from the drill, they were carried to a point some distance from the drill by a core-grabber (an employee of the Windfall Company), and there he took the core out of the barrel and placed it in boxes. Each box was about 5′ long, with five longitudinal trays or

[1]Table 51.
[2]Exhibit 83.

depressions on the inside into which the core fitted. The core itself from the first drill hole was 1.25″ in diameter.

Down to 7 p.m. 3rd July the core gave no indication of any conductive material. It is apparent that George MacMillan was keeping a close watch. When the drill reached a depth of 416′, the point at which Dr. S. S. Szetu had said the conductor would be found, George MacMillan was sufficiently disturbed to phone Dr. Szetu to report the absence of any satisfactory evidence of the conductor. Dr. Szetu's explanation satisfied him and he continued drilling. By Saturday morning the sludge had turned black indicating that the drill had entered graphitic rock or sulphides.

It was following this that Edgar Bradley spoke to his brother and Frank Spencer who were in Noranda.

When George MacMillan left the Windfall claims sometime during the afternoon of 4th July, he took with him four boxes containing the lowest section of the drilled core. No attempt was made, then or later, to remove the boxes containing the core drilled earlier, nor was any examination made of it until the routine examination made by Dr. Ambrose in the course of logging the core on 22nd July.

The reason George MacMillan advanced for removing the core was that there was no core shack in which it could be stored and that "snoopers" were constantly seeking to find out what was going on. This action itself was bound to be interpreted as an indication that the core was valuable. If the reason for removal was not to create such an impression, the only other reason was to insure that no one, by seeing it, could discover the true nature of the core.

After taking these four boxes to the Timmins office of the Windfall Company, George MacMillan was in the Timmins office of Bradley Bros. Ltd. looking for acid. There, he was seen by Roch Grignon, Guy Coté, Edgar Bradley, and possibly others. After George MacMillan left, Edgar Bradley told Guy Coté that there was mineralization in the core, giving Boucher as his source of information. Grignon, although he was not able to recollect so doing, had heard George MacMillan saying that he had a good looking core. The purport of this statement was reported by Grignon to Frank Spencer the next day.

Drilling continued until 7 a.m. 5th July, reaching a depth of 570′, at which point it had completed the purpose for which the drill hole had been sunk—to traverse the conductor and go 100′ beyond it.

About noon 5th July, on the arrival of the MacMillans together with Ronald Mills, four more core boxes were taken from the property in the MacMillans' station wagon. The core in these boxes came from the section which was immediately below that part of the drill hole from which had come the core contained in the boxes removed the previous day.

Boucher, Dufresne, two drillers and a core-grabber named Turney also travelled to Timmins in the station wagon, along with Ronald Mills and the two MacMillans. Dufresne testified that, en route to Timmins, Viola MacMillan threw her arms around Boucher, who was sitting beside her in the front seat, and thanked him for

finding her a new mine. No other occupant of the station wagon recalls this incident, but Dufresne's demeanour while giving his testimony leads to the conclusion that his story should be accepted. From the testimony of the other occupants, there was an air of apparent optimism during the trip, and concern was expressed by Viola MacMillan over the safety of the core.

In Timmins the eight core boxes were transferred to the MacMillan car and taken to Toronto. A stop was made near Novar, at the cottage of Doris Drewe, one of the directors of the Windfall Company. While there, Viola MacMillan told Doris Drewe that they had some boxes of core in the back of the car and that the core had some mineralization in it.

Before the MacMillans reached Toronto, efforts were made to reach Dr. Ambrose, the purpose being to get him to come to Toronto to give his professional opinion of the core.

The eight boxes were left in the garage at 303 Oriole Parkway, the MacMillan Toronto residence. Early in the morning of 6th July, Dr. Ambrose was reached and he agreed to come to Toronto. Normally, he would have gone to the property to make an examination of the core. However, because the core was in Toronto and because of what was conveyed to him over the telephone, he gathered that there was some urgency about the matter, so he drove to Toronto forthwith.

That morning, Viola MacMillan took in for assay two small samples of the core, which George MacMillan said he had picked up casually. These samples came from the region of 343′ and 359′. There is some significance in the fact that, according to the log of the core, the samples were taken from the area where there occurred the transition from unbrecciated andesite to material brecciated with graphite.

The assay office was asked to report to George MacMillan by telephone. This they did later in the afternoon, speaking to Viola MacMillan in George MacMillan's absence. The report was negative as to copper and zinc. It is denied that this report reached George MacMillan.

Dr. Ambrose arrived in Toronto about 2 p.m. 6th July and went directly to 303 Oriole Parkway. He spent about an hour in the house with George MacMillan, discussing the core and examining some sections which George MacMillan showed him. They then proceeded to the garage where four boxes had been removed from the trunk of the car and opened. Dr. Ambrose made a visual examination of this core. The other four boxes remained unopened in the car, and Dr. Ambrose did not bother to open and examine the core in these boxes inasmuch as George MacMillan had told him that it was the same as that which he had examined in the four opened boxes. Dr. Ambrose had confidence in the ability of George MacMillan to form a reliable opinion on this point and unhesitatingly accepted his estimate. Dr. Ambrose believed that the eight boxes contained the core from a little above 400′ to 570′.

The result of Dr. Ambrose's examination satisfied him that there was no copper or zinc of commercial value in the core. He saw some slight evidence of what he thought might be tetrahedrite and wanted to make some further examination as to

this latter possibility. For this purpose, he took with him a sample which he considered the most heavily mineralized and also two other samples, one from the area of rhyolite breccia, and the other a lesser mineralized piece of slate with some pyrite and a little bit of quartz in it. The samples came from the areas 426′, 431′ and 475′. These were representative character samples.[1]

Dr. Ambrose returned to Kingston on 7th July and immediately had some thin sections and polished surfaces prepared by a technician in his laboratory. Upon examination, he satisfied himself that he had been mistaken as to the presence of tetrahedrite and that the core had no commercial value of silver. He stated he had not been instructed to examine the core for gold. For confirmation of his findings, he turned the sections and polished surfaces over to Anthony Naldrett, a post graduate student, whose opinion coincided with his own.

On Thursday 9th July Dr. Ambrose telephoned Toronto to give the results of his examination. His call was taken by an answering service and, although he left his name and number, he did not hear from George or Viola MacMillan for some days.

About noon on 14th July, Viola MacMillan phoned Dr. Ambrose, first calling his office from which he was absent and then, within a few minutes, calling his home where she reached him. They spoke for eight minutes and Dr. Ambrose made Viola MacMillan aware of his opinion as to the worthlessness of the core. This conversation took place shortly before the meeting held in the offices of the Ontario Securities Commission and therefore prior to the composing of the statement released on 15th July.

Some days later the core was returned to Timmins and put in the newly-erected core shack. Drilling continued to a depth of 863′. On 19th July, Dr. Ambrose was asked to go to the property and while there he logged the core and he and George MacMillan split the core sections from 414.5′ to 570′ and from 771′ to 787′. From these sections 27 samples were placed in canvas bags. With one exception, the portions of the core from which the samples were taken had been drilled prior to 6th July, brought to Toronto and returned to Timmins.

These 27 samples were delivered to Swastika Laboratories Limited on 24th July. Dr. Ambrose having returned to Kingston earlier, Dr. Kerr-Lawson of Swastika Laboratories Limited was obviously in error when he testified that Dr. Ambrose had been present with George MacMillan when the samples were delivered for assay. The instructions to the assay office were to assay the samples for copper, zinc, silver and gold. No special request was made for a speedy assay, although Swastika Laboratories Limited could have completed the assay in one day. In fact, W. G. Clifford, one of the assay staff, said he gathered the impression that there was no hurry for the results. George MacMillan asked that no phone calls should be made to report the results and that the results should be sent to the company by mail. On 25th July the samples were ground, preparatory to assay, and the actual tests were done on the 27th, 28th and 29th. Reports[2] were mailed out on Wednesday evening, 29th July, in time to catch the Toronto mail. These

[1]Transcript p. 1276, ll. 5-20.
[2]See Exhibit 86.

reports arrived Thursday morning and were opened at the directors' meeting held that day.

Certain facts emerge which are important in any consideration of the conduct of George and Viola MacMillan. George MacMillan had a great deal of experience in mining prospecting and exploration and was conversant with every phase of drilling. He was accustomed to use a glass in the examination of cores, although the use of such an aid was not necessary for a person of his experience in order to determine the presence of copper and zinc mineralization. He had been keeping a close watch on the progress of drilling and had been concerned and informed enough to report to Dr. Szetu his failure to intersect the conductor.

He did some tests on Saturday in Timmins which he describes as field tests. The boxes of core selected to be removed were only those containing the graphitic section of the core, and he was sufficiently familiar with the appearance of the core to assure Dr. Ambrose as to the similarity between the first and second groups of four boxes. Despite his avowed statements that he was impressed by the presence of rhyolite breccia, only a very small section of the core in the eight boxes submitted to Dr. Ambrose for examination contained any part of this material.

What must have been his own estimate as to the lack of value for copper and zinc was confirmed by Dr. Ambrose. No anxiety was displayed about Dr. Ambrose's report and there was insufficient interest to return Dr. Ambrose's call. The meeting of 14th July was held after Viola MacMillan had consulted at some length with Dr. Ambrose. When the core was finally logged, split and sampled, except for one sample, nothing above 359′ or below 570′ was sent for assay.

The immediate reaction of the assayers who received the samples was that they didn't have very much and that the core samples presented would not produce the spectacular results expected from what was generally circulating concerning it.

It is impossible to accept as a fact that George MacMillan was unaware of the lack of value of the core. If he was aware that Boucher was disclosing to others his belief in the worth of the core from an examination of the sludge, it would normally have been expected that George MacMillan would have countered this statement with one of his own based on more accurate information. Even accepting as a fact that George MacMillan had been misled as to the value of the core, any belief he may have had was completely shattered by Dr. Ambrose's examination on 6th July.

The statement dictated by George MacMillan to Viola MacMillan on 7th July,[1] to be presented to the directors' meeting in his absence and publicly released, was deliberately misleading.

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[1]Windfall Oils & Mines Limited has started diamond drilling on Lot 9, Concession 1, Prosser Township, in the Timmins area.

The first drill hole is intended to test an area indicated by a geophysical anomaly. The hole, not yet complete, entered bed-rock after going through 68 feet of overburden. Cutting approximately 300 feet of volcanic rock, ending in rhyolite breccia, the drill entered a mineralized graphitic shear zone at 416 feet and has remained in it to 530 feet. Drilling will continue. The core is being sampled.

Officials are encouraged because of the proximity of this area to the recently discovered copper-zinc-silver ore body of Texas Gulf in the neighbouring Township of Kidd.

G. A. MacMillan,
President.

Any hope that minerals other than copper and zinc might be present, which persisted after Dr. Ambrose's visit, could not have survived the report that Dr. Ambrose was prepared to give on 9th July. The lack of interest in this report, when it was known that Dr. Ambrose was prepared to give it, leads to the conclusion that George MacMillan had already been satisfied that the report would be negative.

Finally, prior to the meeting of 14th July, Dr. Ambrose's telephone report removed the last vestige of any grounds for retaining any hopes as to the possible presence of silver in commercial quantities.

Dr. Ambrose, in his testimony, said that he could not be certain, after visual examination, that the core had no mineral content, and that until assays and technical examination are made with the assistance of instruments, the result of any visual examination remains only an opinion. In this respect he was speaking with reference to scientific certainty which he, as a professor of geology, would expect to precede any pronouncement.

The prepondering weight of the evidence which referred to accuracy, from the point of view of a practical mining man, establishes that it was common practice to determine through visual examination made by a person of some, but not necessarily great, experience in dealing with drill cores, whether a core indicated commercial copper or zinc.

While the sittings of the Commission were in progress in Timmins, a group of thirty geologists, many associated with mines in the locality, were requested to view the core. One of that group, Fenton Scott, P.Eng., was asked to give a summary of their conclusions. In their opinion, the type of material in the core is very common and is found all over Eastern Canada; that it is a very discouraging type of ore because it attracts attention electrically through geophysical surveying, but when drilled is so evidently barren as to preclude any further optimism; and that it further indicated nothing from which it could be inferred that there was a mine in the immediate vicinity.

Dr. Buffam was of the opinion that any person whose experience in dealing with drill cores from the Canadian Shield was of a level equal to, or even somewhat less than, that of George MacMillan would have been able, by visual examination of the core, to estimate its copper and zinc content within a tolerance of ½ of 1%.

From George MacMillan's testimony it can be concluded that he was aware that the drill core taken from the No. 1 hole on the Windfall claims contained no copper or zinc in commercial quantities. In his testimony he emphasized the fact that he was interested in the making of a mine and not in the value of that particular core. Regardless of what may have been his personal views as to his chances of ultimate success, the totality of the evidence justified no other conclusion than that, from 5th July onward, he was fully aware that the drill core in question did not contain any commercial quantities of copper or zinc and that, to his knowledge, the reports as to the value and the mineral content circulating were without any foundation. This knowledge was, no doubt, shared by his wife.

IX

WEEKEND: JULY 3rd-6th

Between 3rd July, when approximately 40,000 shares of Windfall Company were traded at prices ranging from 56¢ to 68¢, and 6th July when 1,574,520 shares changed hands at prices ranging from a low of $1.00 to a high of $2.00, the attitude of the buying public underwent a revolutionary change.

The causes of that change are not to be found in anything done by Windfall Company itself. During that period no information was formally released. However, certain events which occurred over the weekend played a prominent part in bringing about the change.

It has been impossible to reconstruct the events of those days. It was understandable that in the late winter and early spring witnesses would have difficulty in recollecting with exactitude events which had taken place in the previous summer. Nevertheless, the high incidence of amnesia displayed amongst those who were examined concerning this period was beyond what would ordinarily have been expected. With the exception of Frank Spencer an officer of, and Guy Coté a driller for, Bradley Bros. Ltd., all the witnesses connected with Bradley Bros. Ltd. showed such unsatisfactory recollections of the important events as to make their testimony unreliable. As a consequence, the testimony of Frank Spencer and Guy Coté, which was given with complete frankness, has been accepted in all instances where conflict existed between it and the testimony of others.

July 3rd

On Friday, Gregory E. Reynolds, a staff member of the Timmins Daily Press, John Larche, Donald McKinnon and Nedo Bragagnolo dined together at the Senator Hotel in Timmins. Reynolds believes that this was in the evening. Larche and McKinnon place it at lunchtime but their recollections of the events otherwise coincide. During the course of the meal, Donald McKinnon was called to the phone and on returning to the table, according to the testimony of Reynolds and John Larche, repeated a conversation with James Gracie of Sturgeon Falls. This party informed McKinnon that a Toronto broker had spoken to him about Windfall Company shares, and that his advice had been that they were going to rise and should be bought. McKinnon's memory of this phone call was somewhat hazy, but his best recollection was that his informant reported a broker's statement that drilling was commencing on Windfall claims and that the stock should rise. At that time the drill on the Windfall claims had not reached the conductor. It can be concluded that the rumour had no connection with anything which had happened on the claims.

George MacMillan was at the claims during the afternoon of this day.

About 7 a.m. Saturday morning, George MacMillan telephoned Dr. S. S. Szetu concerning the failure of the drill to intersect the conductor and was advised to continue until he reached the vertical depth he (Dr. Szetu) had projected as the start of the conductor.

During the night shift ending 7 a.m. 4th July, the sludge was observed to turn black. Boucher, one of the drillers, told Walter Turney, the core-grabber, that the sludge at Kam Kotia looked the same. When George MacMillan returned to the Windfall claims around noon on 4th July, he was informed that during the night shift the sludge had turned black.

Between 1 and 2 p.m. Dr. Szetu phoned George MacMillan to enquire whether the conductor had been cut and was informed it had been. He asked "What is it?", to which George MacMillan replied "Graphite and sulphides".

After this call George MacMillan returned to the Windfall claims. At his direction four core boxes were carried to his car which was at the road. These, he took to the Windfall Company office in Timmins. The core contained in these boxes was probably from the 404′ to 494′ section.

Shortly after noon, Edgar Bradley (one of the officers of the drilling company) was speaking by phone from Timmins to Frank Spencer in Noranda and in the course of the conversation informed him that there was mineral in the Windfall core.

Edgar Bradley was most uncertain about everything that occurred over this weekend. On any point in regard to which he did commit himself, he did so grudgingly after the testimony was literally drawn from him. He testified that he probably told Frank Spencer there was 85′ of mineralization in the core. He admitted that any information he gave Frank Spencer came to him from the driller, Boucher. Boucher's testimony is that once he told Edgar Bradley that by looking at the sludge it could be good or couldn't be good. Bradley further admitted that Boucher also told him the core looked as good as the core from Kam Kotia but, with respect to this latter statement, said that it was probably not made until the Monday, Tuesday or Wednesday.

This seems improbable, due to Boucher's earlier statement to Turney to the same effect. The information which Edgar Bradley gave to Frank Spencer was passed on to Wilbert Bradley, who was beside Frank Spencer during the telephone conversation.

Sometime in the latter part of that day, John Angus, the Manager of the T. A. Richardson & Co. office in Timmins, heard that the Windfall Company had made a strike.

In the afternoon Guy Coté, who was then engaged as a driller at the Kam Kotia property, made a routine trip to the Bradley Bros. Ltd. office in Timmins for the purpose of getting supplies. While Coté was there, George MacMillan came in

seeking some acid, which Coté believed was wanted in order to test the core for some kind of reaction. When Edgar Bradley arrived at the office, he dispatched someone to get the acid at a service station. George MacMillan took the acid away with him. George MacMillan's testimony did not throw any light on this event, although he did admit that he had in his office acid of the nature described, which he assumed he got at the time. He also described the test he made, saying it was a field test for copper.

After George MacMillan's departure, Edgar Bradley told Guy Coté that he, Bradley, had heard from a driller that there was some mineral at Windfall. Guy Coté believes, but is not positive, that the name of Boucher was mentioned as the driller concerned.

Late in the afternoon Roy Powley, a garage operator in Timmins, spoke with George MacMillan, who was sitting in his car in front of Powley's used car lot. Powley, the owner of 1000 shares of Windfall Company, enquired of George MacMillan how he was getting along with the work at the property. George MacMillan stated that he had pulled some core. Something was said about mineralization and it looking good, but that no tests had been run.

That evening George MacMillan spoke to Viola MacMillan by telephone. It had been her intention to come to Timmins with respect to some work which was being done on an apartment being prepared for her occupancy. She went to Timmins partly on account of her earlier plans and partly as a result of the telephone call but, as she wanted the assistance of Ronald Mills in driving, she did not leave until he was free, sometime about midnight. Leaving the MacMillan country property, they drove all night and arrived in Timmins between 6:30 a.m. and 7 a.m.

July 5th

Shortly after Viola MacMillan arrived, Edgar Bradley met her and George MacMillan outside the Empire Hotel. They told him they were going to the property, and spoke of stopping the drill; and Edgar Bradley told George MacMillan to give the drillers instructions if he wanted the drill stopped. At this time, Edgar Bradley was not given any instruction to build a core shack. None of these people can recollect any conversation concerning the mineral value of the core. It is a strain on one's credulity to believe that, under all the circumstances, the possible value of the core was not a topic of some conversation between these three people.

Edgar Bradley proceeded to other work of his own, and the MacMillans together with Mills, after having breakfast in Timmins, went to the Windfall claims, arriving shortly before noon. As custom permitted, the drill crew had elected not to work on this Sunday and no work was done after the conclusion of the night shift at 7 a.m., by which time the drill had reached a depth of 570'.

Four more boxes of core were taken and put in the MacMillan station wagon. Boucher, Dufresne and Turney were driven back to Timmins.

Wilbert Bradley and Frank Spencer had planned to visit their sons at Kam Kotia on Sunday. The conversation with Edgar Bradley on Saturday had no

deterring effect on this plan so, together, they drove to Timmins. On arrival, they went directly to the Bradley Bros. Ltd. office, where they met Roch Grignon who worked in the office.

According to Frank Spencer's account, Grignon told them that George MacMillan had been in the office the previous afternoon and had said, for all present to hear, that there was 65′ of good looking core in the first Windfall hole. Grignon persistently contended that he had no recollection of having made such a statement to Spencer, but would not deny that such a statement had been made. Wilbert Bradley, who was present, did not remember Grignon's statement, but in other respects he confirmed Spencer's testimony. This is an instance where the testimony of Frank Spencer is preferable and his account of the statement made to him by Grignon should be accepted.

Spencer and Wilbert Bradley proceeded to Kam Kotia, where they met and spoke with Guy Coté who told them of his visit to the office of Bradley Bros. Ltd. in Timmins the previous evening. There, he had seen George MacMillan and had heard from Edgar Bradley that there was mineral at Windfall. He also stated that he believed Edgar Bradley's source of information was Boucher.

Returning to Timmins later in the evening, Frank Spencer and Wilbert Bradley met Edgar Bradley in his room at the Bon Air Motel. All three engaged in a discussion about making substantial purchases of Windfall Company shares. Frank Spencer was concerned about the propriety of buying shares when the information upon which they were proceeding had come to them through their association as drillers for the company. Neither of the Bradleys seemed to be as concerned on this account as was Spencer. Frank Spencer suggested that they speak to Viola MacMillan and ask if she would consent to their purchase, but they were unable to reach her.

The three associates parted, each to make his own decision. They thought no one else knew about the minerals which they believed to be in the property. Frank Spencer was uncertain as to what course he would follow but believed Edgar Bradley and Wilbert Bradley intended to buy heavily. As Wilbert Bradley and Frank Spencer were leaving the motel, they ran into M. W. Rennick but stated that they said nothing to him.

Sometime during Saturday Robertson, the Manager of the Noranda office of T. A. Richardson & Co., heard some discussion at the golf club at Noranda as to the results of the drilling on the first hole at Windfall. On the evening of Sunday, 5th July, he received a telephone call from R. C. J. Edwards, an engineer associated with a Noranda affiliate, who told him that he had heard that there was a substantial length of sulphide in the Windfall core.

Robertson, during Sunday, passed on to I. E. Jones the information which had come to him from R. C. J. Edwards. At that time, I. E. Jones was a partner in the brokerage firm of Housser & Co. Limited, but had earlier been an associate of the Bradley brothers in the drilling company which was the antecedent of Bradley Bros. Ltd.

On Sunday, Rennick telephoned Vernon Oille, an exploration engineer of Noranda Explorations, Ltd., and gave him the story which he had heard in Timmins over the weekend regarding the value of the Windfall core. The report which Oille received was that there were sulphide minerals in the Windfall core.

By the early morning of 6th July, rumours as to the Windfall core, nearly all directed to the mineral value, had reached the following persons who made some effort to capitalize on what they considered to be information as to the potential value of Windfall Company property: Edgar Bradley, Wilbert Bradley, R. C. J. Edwards, I. E. Jones, Vernon Oille, Melville W. Rennick, William G. Robertson, and Frank Spencer.*

*See Table 5.

X

JOHN CAMPBELL

Because it involved improper conduct by a public servant holding a position of considerable importance, John Campbell's dealing in the shares of the Windfall Company and the loan to him by Viola MacMillan of share certificates in that company constitute the most shocking incident revealed before the Commission.

It is necessary to recount in some detail John Campbell's actions and those of his wife, which he adopted. But in doing so a distinction must be observed between the personal consequences to John Campbell of those actions, which are the responsibility of his superiors to appraise and punish, and the effect his actions had upon the relationship of the Securities Commission to the affairs of Windfall Company. Only the latter area falls directly within the terms of reference of this Commission.

To make this distinction is not to contend that there is no concern with the irregular conduct of John Campbell: that can neither be condoned nor explained. The appraisal of the magnitude of his departure from the standard expected from such an official, and consideration of the sanctions to be applied, are not matters for this Commission; they are matters pertaining to the Attorney General for Ontario, of whose Department the Securities Commission is a branch.

It remains to be considered how far the attitude of the Securities Commission to the affairs of the Windfall Company and of George and Viola MacMillan was colored by John Campbell's own views and actions; his conduct is reviewed only for the purpose of putting into proper relief the actions of the Securities Commission in this situation.

John Campbell was appointed the Director of the Securities Commission in November 1963, filling a post provided for by Section 3 of The Securities Act. The duties of the directors are set out in Section 4.*

Prior to his appointment, his principal legal experience had been as a full-time employee, successively, of two large corporations. One of these, an oil company, had some interest in the natural resources development field. He had acquired no special experience in the security regulation field and, as will later be more fully discussed, displayed certain fixed concepts of the function of a security commission, and his duties as director. These were of questionable accuracy, but they accounted for at least some of his over-activity concerning the affairs of the Windfall Company and the MacMillans.

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*"Sec. 4. The director may exercise the powers and shall perform the duties vested in or imposed upon him by this Act, and he may exercise the powers and shall perform the duties vested in or imposed upon the Commission by this Act or the regulations that are assigned to him by the Commission, except those mentioned in sections 21 to 27 and 29, and, subject to the direction of the Commission, he shall have control of the administration of the Securities Branch and the staff thereof.

The principal areas in which the personal views of John Campbell conditioned the manner in which he viewed his responsibilities are illustrated by the following excerpts from his testimony.

"Q. A general question: in what capacity were you phoning Mrs. MacMillan at that time?

A. Well, The Securities Act, as you know, is rather sketchy as to the relationship between the Toronto Stock Exchange and the Securities Commission. What we have to do with listed stocks literally is nothing. But at the same time the Toronto Stock Exchange continues to be the Toronto Stock Exchange and it is under this exception—the fact that we recognize it. It is the only exchange in Canada that we recognize under the Act. Trades on a recognized stock exchange are not under our jurisdiction, but at the same time we feel—or I felt anyway—that we still have a controlling interest over the Toronto Stock Exchange . . ."*

**Transcript p. 2732, ll.10-25.*

"Q. So are you just giving this as an illustration?

A. I am giving this as an illustration of a situation that we have, to show that we are keeping a parental eye on the Toronto Stock Exchange.

Q. And it is because of this that you felt that you had some interest in this whole affair?

A. I thought, to say the least, an important matter like Windfall—there were rumours going around all over the place. The thing was trading in very great volume and I thought at the very least they could notify us when they were taking such an important step as to decide to deal with such popular stock as Windfall. They had not seen fit to do so. This annoyed me quite a bit and I did not agree with the fact that they should delist this stock, and I would have told them."*

**Transcript p. 2733, ll. 10-27.*

"A. Mr. George Gardiner I have known since I went to university. I have great respect for Mr. Gardiner's knowledge of the market and of the Toronto Stock Exchange. I felt that the Toronto Stock Exchange was wrong in what it was doing, that the only persons who were going to suffer would be the investing public and the shareholders of Windfall.

I was trying to effect some sort of a compromise between the MacMillans and the Toronto Stock Exchange, so I sought Mr. George Gardiner's advice. He was chairman of the Toronto Stock Exchange for some time."*

**Transcript p. 2738, ll. 2-13.*

"A. The reason I went to see Mr. and Mrs. MacMillan at their farm was to try to effect some sort of a compromise between Viola and George and the Toronto Stock Exchange . . ."*

**Transcript p. 2740, ll. 17-20.*

"Q. Yes. Can you tell us anything more about the meeting or the conversation?

A. Well, Viola's position and Mr. George MacMillan's position—and I thought rightfully so—was that the Toronto Stock Exchange were going over and beyond anything they had ever done before in requesting this information."*

**Transcript p. 2742, ll. 16-22.*

"A. The request was not made in such a way, Mr. Hartt, that the—If General Graham and Mr. Somerville knew the MacMillans, and I am sure they know the MacMillans, they would never have drafted that telegram in the manner they had, if they expected a reply.

Q. Do I understand . . .

A. You just don't go to Viola MacMillan and say: 'I want this,' or 'We are going to do this.' I mean, you don't do that to Viola MacMillan."*

*Transcript p. 2744, ll. 14-24.

"Q. Could I ask you one question: Did I understand it is your understanding the directors of the company have responsibility only to their shareholders and no responsibility to the general investing public?

A. They are employed by their shareholders. These are the only persons they have a duty to, as far as I am concerned.

The Commissioner: You don't recognize any change in their position when they undertake to list their shares on the public market?

The Witness: Sir, my impression of the public market, such as the Toronto Stock Exchange, is just a means whereby these shares get approval.

The Commissioner: I only asked you one question: Does the listing of the shares on a public market change the responsibility of the director?

The Witness: In my opinion, no, sir."*

*Transcript p. 2748, ll. 8-25.

"Q. Having in mind what you just said about the responsibility of the directors of a public company, where did your duty lie, as you saw it, as director of the Ontario Securities Commission?

A. My duty lay to the public. My duty as director of the Ontario Securities Commission is to protect the public no matter what I have to do, and this is exactly what I did.

The Commissioner: Where in the Securities Act is this duty spelled out?

The Witness: It is not spelled out. The only power the Securities Commission has over the Toronto Stock Exchange is the fact that we can withdraw recognition. This is the only power we have over the Toronto Stock Exchange."*

*Transcript p. 2834, ll. 15-29.

"The Commissioner: Let's take it back further, Mr. Campbell. I may take a strict view, but I look at a person who exercises that function under a Statute—he looks for his definition of his powers and duties in the Statute?

The Witness: Well, my powers and duties in the Statute, sir, are spelled out in Section 4, and it is only a short Section.

The Commissioner: Yes, but your powers and duties could not be higher than that of the whole Commission?

The Witness: That is correct, sir.

The Commissioner: And what do you understand are the areas of activity of the Commission?

The Witness: Well, as I said before, this is not spelled out as related to the Toronto Stock Exchange, and both Mr. Kimber and I—I believe Mr. Kimber did and I certainly did—take the view that we have a sort of paternal—keep a paternal eye on the Toronto Stock Exchange."*

**Transcript p. 2835, l. 16 to p. 2836, l. 4.*

"The Commissioner: Under that framework I am interested in what you conceive to be your duty with regard to the Windfall situation.

The Witness: Well, sir, I felt when I learned of the telegram and the press release of the Toronto Stock Exchange—I felt they had not gone about it the proper way; that they knew the MacMillans as well as I did. Documents of this nature—a telegram of this nature—would only annoy the MacMillans.

They had not used, in my opinion at least, any diplomacy in any way, shape or form at all. I felt that if the stock was delisted it would immediately fall out of bed and then continue trading; rumours would still continue and the thing would be utter chaos."*

**Transcript p. 2837, ll. 4-19.*

To return to the account given by John Campbell, which was corroborated by other witnesses who gave testimony as to the same phase, his first meeting with Viola MacMillan was in February 1964. It occurred during the preparation for a panel discussion in which he was to take part during the Prospectors and Developers Association Annual Convention. This led to a continuing social relationship between John Campbell and his wife and Viola and George MacMillan. Later, John Campbell invited Viola MacMillan to address the mid-year meeting of the Canadian Securities Commissioners.

On the 20th of April 1964 Louise Campbell, the wife of John Campbell, bought, through Account 707 at J. L. Goad & Co., 2500 shares of Windfall Company, 2000 shares of White Star Copper Mines Ltd. (White Star) and 5000 shares of Chesterville Mines Ltd. (Chesterville). John Campbell was not aware of these purchases. On 23rd April while John Campbell, in the course of his duties, was at the office of Tom and Barnt, a firm of broker-dealers carrying on a large business in unlisted securities, he received a phone call from his wife, who informed him of her purchases and asked him to "bail her out". He immediately opened an account with Tom and Barnt under the name of B. L. Campbell, and placed an order to sell for that account 2500 shares of Windfall Company and 2500 shares of White Star. The next day he discovered that he had oversold White Star by 500 shares and purchased an equal number to correct the over-sale.

On 5th May 1964, $1360.00 was paid into the Tom and Barnt account. The sum came from an account in the Canadian Imperial Bank of Commerce which was maintained in the name of Louise Campbell. On 15th May Tom and Barnt issued a cheque for $5684.00 in favour of J. L. Goad & Co., and on delivery of it picked up 2500 shares of Windfall Company, 2000 shares of White Star and 5000 shares of Chesterville. On the books of Tom and Barnt, $1637.50 of this amount paid to J. L. Goad & Co. was charged to the account of David Winchell, and $4047.50 was paid to the account of B. L. Campbell. On 17th June, a check for $980.00 was

drawn on the Bank of Nova Scotia, Bloor Street, from an account maintained under the name of V. L. Sherwood and this was paid into Tom and Barnt.

The transaction between J. L. Goad & Co. and Tom and Barnt essentially involved the transfer of Louise Campbell's account from J. L. Goad & Co. to Tom and Barnt. However, prior to this time, John Campbell had complained to David Winchell about the sale of the Chesterville stock to Louise Campbell, saying: "What a rotten deal it was", and David Winchell replied that he would "take it back". John Campbell was not aware of what instructions David Winchell gave, save that the Chesterville shares went to the credit of David Winchell's account at Tom and Barnt and the payment of $1637.50 to J. L. Goad & Co. was charged against that account.

Earlier, during the time that Viola MacMillan was endeavouring to secure the approval of the Exchange for her sale to the Windfall Company, John Campbell met Viola MacMillan and she complained of the manner in which the Exchange was rejecting her proposal. John Campbell also spoke to T. F. C. Cole, Q.C., about this time and gathered he agreed there was just cause for her complaint.

Later, in the month of June, John Campbell was told by Viola MacMillan that the Windfall Company was drilling on its property. He heard nothing further until after the press release of 7th July, which came to his attention a day or two after that date.

On 9th July 1964, because of the rumours which were current, John Campbell arranged to meet Viola MacMillan at the Royal York Hotel in the late afternoon. He endeavoured to ascertain from her the truth concerning the rumours. He was not able to get any accurate information although he was satisfied that the drill core had been neither split nor assayed and that it was in the MacMillan's personal possession.

Immediately following this meeting, the Campbells and the MacMillans met for dinner at Julie's Restaurant, an establishment in which Louise Campbell had a financial interest. During the course of dinner, George MacMillan asked John Campbell's opinion regarding the ethics of the sale by him (George MacMillan) of 25,000 shares of Windfall Company. George MacMillan stated that he still owed a bank loan which he had negotiated for the purpose of taking over the control of Windfall Company and wanted funds to pay it off. John Campbell replied that he could see no legal or ethical barrier to such a sale and undertook to give a letter to this effect. After the party left Julie's, John Campbell went to his office and personally typed a letter addressed to George MacMillan. The letter was retyped the next morning by John Campbell's secretary. This latter letter was introduced as exhibit #205.

After completing the letter, Campbell went to the Sentry Box in the Lord Simcoe Hotel where he joined his wife and George and Viola MacMillan. While there, they were approached by James Scott, a newspaper man, who endeavoured to get some confirmation of the rumours which were prevalent. John Campbell's recollection is that George MacMillan said to Scott: "If you don't want to be rich, don't buy Windfall". Scott's recollection differs slightly but not significantly.

Sometime in the afternoon of 10th July, John Campbell was informed by a broker that the Exchange had made demands on the Windfall Company directors for further information. After trying, unsuccessfully, to speak to General Graham and W. L. Somerville, he finally reached McKay, the Public Relations Officer of the Exchange, who confirmed the fact that telegrams had been sent to the directors. John Campbell immediately drove to the residence of the MacMillans but was able to have only a brief conversation with them as they were about to depart to attend a wedding reception.

At this time, although John Campbell had constantly tried to elicit information in regard to the exact nature of the Windfall core, he had been able to get no statement from either George or Viola MacMillan. He had, however, gained the impression that the drill had just entered the mineralized section and that the last 12 or 13 feet were quite promising. While this was his original impression, he later came to believe that the promising area was but a few inches.

Late that evening, at home, John Campbell's wife informed him that, during the day, she had sold short, through an account in the name of V. L. Sherwood, 2000 shares of Windfall Company stock and that, due to the continuing rise in the market, she did not know how she was going to acquire stock to make delivery.

On 11th July, a Saturday, John Campbell drove to the country home of George Gardiner, an ex-chairman of the Board of Governors of the Exchange, to seek advice as to what should be done to prevent what he thought to be an unjust threat to delist Windfall Company shares. It was George Gardiner's suggestion that an approach be made to General Graham.

On the same afternoon, John Campbell, together with his wife, visited the MacMillans' country home near Tottenham. While the Campbells remained there, George MacMillan drove to Toronto to get a copy of the letter which, under date of 10th July, had been sent by Windfall Company to the Exchange. After reading that reply, John Campbell was of the opinion that it would not be acceptable to the Exchange and that further action would be necessary.

In the course of that discussion, someone (probably Viola MacMillan) suggested that they should enlist the help of the Honourable George Wardrope, the Minister of Mines. After endeavouring to reach the Attorney General, J. R. Kimber, Q.C. and J. F. MacFarland of the Securities Commission, John Campbell spoke to Mr. Wardrope at his home in Port Arthur and arranged to meet him in Toronto the following evening (Sunday 12th July). It is John Campbell's recollection that he told Mr. Wardrope that the purpose of the meeting was to discuss the Exchange's threat to delist Windfall Company shares, but he is positive he did not tell Mr. Wardrope it was the intention that George and Viola MacMillan be present at the meeting.

Before leaving the MacMillan country home, John Campbell spoke to General Graham at his home in Oakville, asking to see him the following morning. He also arranged a further meeting with George and Viola MacMillan for the next afternoon, after the meeting with General Graham.

Louise Campbell testified that in the course of the visit to the MacMillan farm she took the occasion to appeal to Viola MacMillan for assistance in making the delivery of the shares of Windfall Company which she had sold short. She did this by handing to Mrs. MacMillan a piece of match box upon which she had written "V. L. Sherwood", but Viola MacMillan does not recall that Louise Campbell's action conveyed to her any impression as to what the purpose of the appeal was.

On Sunday 12th July, John Campbell went to General Graham's residence and, in the course of a discussion, read to him the contents of the letter which had been addressed by the secretary of Windfall to the Exchange under date of 10th July. This letter had not come to General Graham's attention at this time. General Graham advised him that he did not think the letter would be acceptable to the Board of Governors and that the Windfall Company should make a fuller statement.

During the afternoon, John Campbell called on George and Viola MacMillan at the Constellation Hotel, at which time he made efforts to secure their agreement to a further and more satisfactory disclosure to the Exchange, pointing out that the letter already drafted would probably not be accepted. At the conclusion of this interview, Viola MacMillan left the suite of rooms occupied by herself and her husband and walked to the elevator with John Campbell.

In an effort to impress Viola MacMillan of his conviction that some effort should be made to meet the Exchange's demands, John Campbell disclosed his wife's short position, pointing out that he was working against his wife's best interests. Upon hearing of Louise Campbell's predicament, Viola MacMillan returned with John Campbell to her bedroom, took from her purse certificates representing 3000 shares of stock of the Windfall Company, and handed them to John Campbell. He protested that the amount was not enough to do him much good and asked for 5000. She acceded to his request. Throughout the course of this incident George MacMillan remained in his room, unaware of what was taking place.

Later in the evening, about 9 o'clock, John Campbell met Mr. Wardrope in the lobby of the Royal York Hotel, before Mr. Wardrope had registered and entered his room. He secured Mr. Wardrope's consent to see the MacMillans and then departed to get them. It was while he was absent that Mr. Wardrope endeavoured to reach members of the Government and of his staff, finally succeeding in speaking to Mr. Brady Lee, who joined him. When John Campbell returned with the MacMillans, dissatisfaction was expressed with the attitude taken by the Exchange in demanding a statement setting out accurate information as to the company's knowledge of values in the drill core. Mr. Wardrope spoke to General Graham by telephone to find out the exact requirements of the Exchange and made notes of what was being said. Later, John Campbell wrote out by hand one or two memoranda. The notes made by Mr. Wardrope and one of the memoranda (Exhibit #113) were handed to the MacMillans and the next day were used in the preparation of the letter sent to the Exchange by T. F. C. Cole, Q.C.

About 8:30 a.m. on 13th July, John Campbell received a phone call from Viola MacMillan informing him that T. F. C. Cole, Q.C., would be unavoidably delayed

in reaching his office. John Campbell phoned J. F. McFarland, the senior member of the Securities Commission in the city, and General Graham to advise them that the reply required would have to await T. F. C. Cole's arrival. General Graham was not prepared to give any commitment as to what would occur. Later in the day, John Campbell spoke to either T. F. C. Cole, Q.C. or Roger Archibald, Q.C., and was informed that a letter had been delivered to the Exchange which apparently was acceptable, since trading had not been suspended.

On the following morning, 14th July, J. R. Kimber, Q.C., the Chairman of the Securities Commission, being absent, John Campbell attended on the Attorney General and reported to him upon his activities regarding Windfall Company. When the Chairman returned to his office, John Campbell gave him an extensive account of his actions. On this occasion, John Campbell informed J. R. Kimber, Q.C., of the personal animosity which had arisen between himself and General Graham, and he also suggested that there should be a meeting between Messrs. Kimber, McFarland, officials of the Toronto Stock Exchange, and George and Viola MacMillan. The meeting was arranged for the afternoon of the same day.

The meeting convened at the office of the Securities Commission; present were J. R. Kimber, Q.C., J. F. McFarland, General Graham, Marshall Stearns, W. L. Somerville, Dr. Frohberg (the Commission geologist), George A. MacMillan, Viola MacMillan and T. F. C. Cole, Q.C.

John Campbell was not present at that meeting. Before it took place, however, he expressed to the Chairman of the Commission his personal opinion that the Exchange was being too hard on Windfall Company and that the proposed suspension might work to the profit of professional traders at the expense of the ordinary investor. He also recounted in some detail his telephone encounter with General Graham, which had concluded when he, John Campbell, hung up the phone before the conversation otherwise would have ended.

After this date, John Campbell did not take any action which had any bearing on the matters of Windfall Company, although he continued to keep in touch with Viola MacMillan and was aware of what was going on at the property. On 15th July, Viola MacMillan informed him that drilling would recommence immediately, and sometime around 20th July she told him a delay had been occasioned by a broken pump and by the fact that Texas Gulf had started drilling on their property adjacent to the Windfall claims.

Although the loan by Viola MacMillan of 5000 shares of Windfall Company stock had solved immediate personal difficulties arising from Mrs. Louise Campbell's short sale, John Campbell felt that he still had a loss to make up and he determined to recoup this by trading in the market. On 22nd July, through an account he opened in the name of Mrs. E. Berry, a former secretary of his, he sold 2000 shares of Windfall Company for $8790.00 and through the same account, on 27th and 28th July, purchased an equal number of shares for $6607.50, resulting in a profit of $2182.50.

On 23rd July, he opened a brokerage account in the name of Colin J. Hunter and also a bank account at the Bank of Montreal, Royal York Hotel Branch.

Between 23rd and 29th July, through that brokerage account he sold 8000 shares of Windfall Company for $29,705.00. Then, between the 27th and 31st July, a similar number of shares were purchased for $17,095.00, the profit from this series of transactions being $12,610.00.

On 27th July, John Campbell instructed Tom and Barnt to issue a cheque for $500.00 from the Colin J. Hunter account and forward it to the Bank of Montreal, Royal York Hotel. The cheque was mailed in error to the Bank of Montreal, Royal York Road Branch. When John Campbell learned of this, he went to the Bank of Montreal at the Royal York Hotel; he posed as C. J. Hunter, stated that a cheque for him in the amount of $500.00 had been misdirected to the other branch, and endeavoured to withdraw $175.00 from the Colin J. Hunter account. The manager satisfied himself that a cheque for $500.00 was at the Royal York Road Branch, and agreed to pay John Campbell $175.00, thereby creating an overdraft of $160.00 in the Colin J. Hunter account. On 30th July, John Campbell again attended the Royal York Hotel branch of the bank to deposit the $500.00 cheque. The manager wished John Campbell to identify himself as Colin J. Hunter. This he refused to do and was ultimately forced to disclose his true identity but not his occupation. The bank manager thereupon called Tom and Barnt and, at John Campbell's request, that firm sent a messenger to the bank with $160.00 to cover the overdraft in the Colin J. Hunter account: the bank delivered to the messenger the $500.00 cheque.

Immediately following this episode, the account at Tom and Barnt under the name of Colin J. Hunter was redesignated "Ed Boyer No. 5". Trading in this account resulted in the $12,610.00 profit above referred to. The Ed Boyer No. 5 account was closed 27th August by the issuance of a cheque of $10,000.00 to Ed Boyer which was endorsed by the payee and turned over to the solicitor representing John Campbell. John Campbell referred to Ed Boyer as a professional nominee and stated that Harry Richardson, a partner of Tom and Barnt, had arranged for the use of Ed Boyer's name upon the payment to Ed Boyer of a fee. Ed Boyer, in his testimony, denied being a professional nominee; his version was that at the request of Richardson, who did not disclose to him the identity of the principal, he had agreed to allow Harry Richardson to use his name as an accommodation.

On 31st July John Campbell acquired 3000 shares of Windfall Company stock, the same having been purchased for him by one Gemmell, and delivered to him. On 6th August he purchased a further 2000 shares through Tom and Barnt. John Campbell surrendered the certificates for 3000 shares to Tom and Barnt and received the identical certificates for 5000 shares which had been borrowed from Viola MacMillan on 12th July and which Tom and Barnt had been asked to retain. Later in the evening, after having advised Viola MacMillan that he wished to return the certificates he had borrowed, he met her at her request on Heath Street W., arriving in a taxicab and departing after placing the certificates in her hands as she stood under a street light.

In addition to what John Campbell did, Mrs. Campbell, on her own initiative, through the Canadian Imperial Bank of Commerce, Yonge and Bloor, purchased

1000 shares on 10th July at $3.35 and sold 100 shares on 15th July at $4.25 netting a profit of $72.75.

John Campbell displayed a lamentable lack of any appreciation of his duties and responsibilities in two, if not three, instances. First, in the borrowing of 5000 shares from Viola MacMillan; second, in the demand he made upon David Winchell for the repurchase of the Chesterville shares sold to Louise Campbell; and third, in the market activity in which he engaged in the shares of Windfall Company, a company to which he was directing his attention in his capacity as director of the Ontario Securities Commission.

Perhaps more unfortunate in its results was his conviction that the disclosure of information was a matter to be decided by the directors of a company as they saw fit. This was a view that was not shared by the chairman of the Commission who stated that his approach to the demand of the Exchange was "that the information should be given to the public."*

**Transcript p. 2578, ll. 20-22.*

While it is true that what he took upon himself to do concerning Windfall Company and the MacMillans may have been beyond the scope of his office, he nevertheless believed he was acting in the course of his official duties. Hence, he should have avoided all dealings from which there could have arisen any conflict between his personal interest and the discharge of his duties as he saw them.

When consideration is given to John Campbell's conduct, particularly with respect to his efforts to prevent the suspension from trading of the shares of Windfall Company, it must be noted that over the weekend of 12th July, when his activities were at their highest, his personal interest would have been best served by that suspension. This would have had a depressing effect on the market price of the Windfall Company shares, and thus would have enabled him more advantageously to cover the short position created by his wife's latest venture into the market.

All his efforts, directed to bringing some compromise between the divergent attitudes of the Exchange officials and those in control of the Windfall company, must have arisen from his conviction that the proposed action of the Exchange was not justified under the circumstances and would result in damage to the public investors.

If he had properly viewed his duties, he would have realized that what action the Exchange chose to take was not a matter falling within the scope of the commitment of the Securities Commission, unless such action demonstrated such a complete departure from proper principles as would warrant the Securities Commission in withdrawing its recognition, thereby bringing to an abrupt halt all trading in all securities listed on the Exchange. It cannot but be felt that the close personal association which had grown up between himself and his wife on the one hand, and George and Viola MacMillan on the other, made him particularly susceptible to the views of the situation held by the MacMillans and encouraged him to go far beyond the limits which his duty as director dictated.

Until the return of the Chairman of the Securities Commission to the city

on 14th July, John Campbell was acting on his own initiative and did not seek the benefit of the advice of the Chairman; it is obvious what would have been that advice if it had been sought. On the Chairman's return, the interpretation of the events of the previous few days which was given to him was that of John Campbell. Included in this account was reference to the very unfortunate personal disagreement which had taken place between General Graham and Campbell, resulting in an act which General Graham could not but feel was one of great discourtesy to him.

In permitting personal feeling to enter into a matter in which he must have considered himself to be acting as the senior administrative officer of the Securities Commission, John Campbell jeopardized the position of the Securities Commission and that of the Chairman, at a time when the Securities Commission was facing a situation of unusual gravity. His action made it imperative that efforts be made to restore the cordial relationship which had, up to that time, marked the dealings between the Exchange and the Securities Commission.

It was primarily in order to resolve the unfortunate misunderstanding between the President of the Exchange and the Director of the Securities Commission, and to make a correct exposition of his views as to the obligations of a company to disclose information that the Chairman agreed to the meeting of 14th July.

Neither of these situations would have arisen had John Campbell fully appreciated and properly discharged his duties as an officer of the Securities Commission.

XI

THE HONOURABLE GEORGE WARDROPE

Before any testimony had been heard, many rumours were in circulation regarding the actions of the Honourable George Wardrope, the Minister of Mines, in connection with the affairs of the Windfall Company.

The evidence heard by the Commission relative to Mr. Wardrope's activities included that of General Graham, President of the Exchange; Marshall Stearns, Chairman of the Board of Governors of the Exchange; John Campbell, sometime Director of the Securities Commission; T. F. C. Cole, Q.C., Secretary of the Windfall Company; Ossie F. Villeneuve, M.P.P.; and George and Viola MacMillan.

The evidence of these witnesses touching the areas of the Windfall situation in which Mr. Wardrope took any part agrees in all material aspects, and displays only the normal differences as to details which one would expect to find where a number of persons are asked to give their recollection of events after the passage of many months.

On Saturday afternoon 11th July, after having been to see George Gardiner, a former Chairman of the Board of Governors of the Exchange, John Campbell and his wife called at the MacMillans' country home. At this time the MacMillans displayed the same attitude which marked their reactions to the demands of the Exchange for definitive information. These demands the MacMillans characterized as an unwarranted attempt to tell them how to run a mine. At some stage during the visit, it was suggested, in all probability by Viola MacMillan, that the assistance of the Minister of Mines should be sought in an attempt to resist the wholly legitimate requirements of the Exchange.

As has been stated, John Campbell shared the MacMillans' views as to the unreasonableness of the attitude expressed by the Governors of the Exchange. Following the suggestion that the assistance of Mr. Wardrope should be sought, John Campbell spoke to him at Port Arthur by telephone and asked for a meeting on Mr. Wardrope's return to Toronto. As Mr. Wardrope was planning to fly to Toronto, leaving in the afternoon of the next day, John Campbell arranged to see him at the Royal York Hotel on his arrival there on Sunday evening. Mr. Wardrope does not recall being told the reason for the projected meeting, although John Campbell believes he told Mr. Wardrope there was a great possibility that trading in the shares of the Windfall Company would be suspended. Both Mr. Wardrope and John Campbell agree that Mr. Wardrope was not told that it was contemplated that George and Viola MacMillan would be at that meeting.

When Mr. Wardrope arrived at the Royal York Hotel about 9 o'clock Sunday 12th July, John Campbell met him before he had registered and accompanied him to his room; there he told him of the situation as he saw it. Mr. Wardrope agreed

to meet the MacMillans and John Campbell phoned them from Mr. Wardrope's room. While waiting for the MacMillans to arrive, Mr. Wardrope made abortive attempts to reach the Attorney General, the Deputy Minister of Mines (D. P. Douglass) and the Mining Commissioner (J. F. McFarland) by telephone. He finally spoke to the Mine Assessor and Comptroller of the Department (Brady Lee), who joined Mr. Wardrope as soon as possible and was present during the major part of the interview with the MacMillans.

Before departing to call for the MacMillans, John Campbell told Mr. Wardrope his version of the story of the difficulty between the MacMillans and the Exchange. However, he omitted any reference to his own as well as his wife's dealings in stocks, and to the loan made to him by Viola MacMillan of 5000 shares of Windfall Company stock.

It must be borne in mind that the briefing of the situation given by John Campbell was made by one who then held the senior administrative post of the Securities Commission, and whose actions one would expect to be objective and worthy of reliance. From what was apparent by the evidence given by John Campbell, his views were coloured by a completely unsupportable concept of the purposes of the Securities Commission and his duties and responsibilities as an officer thereof. This was a matter quite apart from the possible influence of his personal involvement in the trading of Windfall Company shares. In addition to the fact that he was, throughout, influenced by his conviction that the MacMillans were justified in their opposition to the Exchange's demand for accurate information, he had shown personal resentment at General Graham's remarks about his deep interest in the affairs of the Windfall Company.

Some idea of the atmosphere in which the discussion with Mr. Wardrope proceeded can be gathered from this statement by Viola MacMillan:

"Q. Could you give us your recollection of that meeting, Mrs. MacMillan?

A. Well, I must say I am afraid George and I were a little rough on Mr. Wardrope. We—I recall—I recall one of the things was: is the Stock Exchange running the mining industry or is he the head of the mining industry? That might be very rude to put it, but nevertheless those words did take place. We were very serious.

Q. Is that what you said to Mr. Wardrope; is that what you mean, Mrs. MacMillan?

A. I think we both did.

Q. What was the purpose of this meeting?

A. Well, Mr. Wardrope is our Minister and I had a feeling that possibly he should be in closer touch with what we were doing and trying to do, and so on."*

**Transcript p. 4869, l .28 to p. 4870, l. 15.*

Mr. Wardrope was shown a copy of the letter of 10th July addressed to the Exchange, which General Graham had indicated was an unsatisfactory answer to the Exchange's demand; and while George and Viola MacMillan, along with John Campbell and Brady Lee, were still in his room, Mr. Wardrope telephoned General

Graham to enquire just what the Exchange required. As General Graham specified the Exchange's requirements, Mr. Wardrope made hand-written notes which he afterward gave to George and Viola MacMillan. The purport of what General Graham said was that, if he received an answer to his request by 10:30 a.m. Monday, it would be put immediately before the Governors of the Exchange for their decision.

John Campbell's recollection is that, following the conversation with General Graham, one or two memoranda were prepared in handwriting. The contents of one of these (Exhibit 113) were read over to W. B. Common, Q.C., then the Deputy Attorney General, and it was subsequently delivered to T. F. C. Cole, Q.C. This memorandum formed the basis of the letter of 13th July sent to the Exchange by the Windfall Company under the hand of its secretary.

After what Viola MacMillan described as "a very short time" spent in Mr. Wardrope's room, she and her husband left and Mr. Wardrope did not again hear from them.

General Graham's recollection of his telephone conversation with Mr. Wardrope on 12th July seems to shed light on the manner in which the situation had been reported by Mr. Wardrope:

"Q. When did you next hear from anyone with regard to this matter, General Graham?

A. Sunday night. After I was in bed. It must have been around eleven o'clock that Mr. Wardrope telephoned to me. I assumed that he was in Toronto, but I can't be sure. I know Mr. Wardrope, and have for many years.

He said words to this effect: Are you going to be able to get this problem of Windfall straightened out, and I said, 'Well, I don't know. To me it seems quite a simple problem. They just make a statement and set the record right,' and so on, and he said, 'Well, I hope that it will be worked out because it would be too bad if control of this company gets away into the States,' and the inference was further that he was referring to the fact that Texas Gulf owned a lot of land up there.

I said, 'Well, George, I hope it will be straightened out, too. It should be,' and that was the extent of it.

Q. Up to this time—

A. I would like to make it clear Mr. Wardrope was not making any request to me or to the Exchange with regard to the company at all. He was, I felt—my reaction was he was the Minister of Mines for the Province and that he was really interested in this company staying a Canadian company and he hoped the problem could be solved."*

**Transcript p. 2086, l. 5 to p. 2087, l. 2.*

Mr. Wardrope's testimony regarding this conversation was:

"A. Well, Mr. Campbell showed me a statement that had been given to the Exchange; they refused to accept. I don't remember the wording of that exactly. I know it did—didn't have anything about assays. It told about the position of the

property; that they were building a core shack and they were having difficulty with keeping things secret up there, and so on.

Mr. Graham had been given this letter and apparently said it wasn't sufficient for his needs for the Stock Exchange, and Mr. Campbell made the point that he and Mr. Graham had a few words, as he felt that Mr. Graham was a little upset about it. He felt that I might do better in getting the information that General Graham wished—would tell Mr. Campbell what he wished, because I was friendly to him—

Q. I show you Exhibit 112 in this inquiry. Is that a copy of the letter you were shown at that time?

A. I couldn't swear to that. I think it is. I think it is, sir.

Q. And after Mr. Campbell opened this discussion which you have outlined to the Commissioner, what happened then?

A. I phoned General Graham and told him that I was in the room with Mr. and Mrs. MacMillan, Mr. Campbell and Mr. Lee, and I said, 'They are concerned about your directive about getting a letter to them and satisfying you so they would not be de-listed. Just what do you require?' If I can correctly interpret the General's words, he said, 'Well, look, all I want to know is if there is an assay. If there is no assay, why isn't there, and everything else pertaining to that operation? Now, if they get a letter containing all that information to me by ten-thirty in the morning it will then be put before the directors at the Exchange for consideration, because, after all, they are the ones that make the decision, not me.'

So we chatted about something else for a minute and I made notes of this as he talked to me, and when I finished them I gave them—the notes—to Mrs. MacMillan. We talked for a few minutes, and they told me, as I said, about the terrible difficulty they were having with snoopers up around there, and were getting a drill core shack building and to get the core properly catalogued, and so on, and that was one of the reasons for the delay, I took it to mean, and then they left me. I never heard any more about it from them."*

**Transcript p. 2465, l. 6 to p. 2466, l. 26.*

On the following morning, 13th July, Mr. Wardrope called General Graham to ask if the statement from the Company had been received. When informed that no communication had reached the Exchange, Mr. Wardrope telephoned John Campbell and learned from him that the statement was awaiting authorization by T. F. C. Cole, Q.C., the Secretary of the Windfall Company, and that Mr. Cole's arrival in Toronto had been delayed. Mr. Wardrope thereupon again called General Graham to advise him that he would be receiving a communication from the Company as soon as the secretary reached his office.

General Graham was under the impression that the second call from Mr. Wardrope originated in Ottawa; however in this he was mistaken since Mr. Wardrope's records, made contemporaneously, indicate that, on that day he was in Toronto, receiving treatment at Toronto General Hospital.

General Graham, in his testimony, was emphatic that Mr. Wardrope at no time had made any request to him or to the Exchange with regard to Windfall. General Graham was of the opinion that, as Minister of Mines, Mr. Wardrope was

expressing a genuine interest that the company should remain a Canadian-owned company and that any problem which involved the Exchange should be resolved.

At a later stage of the proceedings before the Commission, Alfred Andrews, a security salesman who in July 1964 had been employed by Messrs. O'Brien and Williams of Montreal, testified that on the 13th July, somewhere around 10 a.m., but certainly before the market opened, he met Ossie Villeneuve, M.P.P., in front of the post office in Cornwall. Ossie Villeneuve was the member of the Provincial Legislature representing Glengarry and had been known to Alfred Andrews for a considerable period. Andrews' evidence was that Ossie Villeneuve had told him that he had the value of the Windfall core, and in answer to questions as to the source of the information, Ossie Villeneuve stated "I was talking to the Honourable Mr. Wardrope . . ."

The following is an excerpt from the transcript of the testimony of Alfred Andrews:

"A. Well, 'Mr. Villeneuve,' I said, 'where did you get that information?' He said, 'I was talking to the Minister of Mines, Mr. Wardrope, who told me he had been with the MacMillans the day before.' Now, as I understood Mr. Villeneuve—as he gave it to me—he mentioned 12.15, meaning that would be 12.15 on the morning of the Monday, July 13. I said, 'That's a pretty good source.' He said, 'Mr. Wardrope thinks the MacMillans are pretty reputable people and he said that these are the assays.'

Now, later that morning I was in the office, the brokerage office in Cornwall, and I had a conversation with Mr. Villeneuve—this is another conversation, and this conversation may be 10.35, and I said, 'Ossie, is your information any good?' He said, 'Look, I have been talking to him twice since I saw him. Now, how close to the horse's mouth can you get?' I think in consequence of that, later—later that day—I put an order in for some stock in my own account."*

**Transcript p. 3610, ll. 4-23.*

From the 6th July onwards, Ossie Villeneuve had been buying and selling shares of the Windfall Company. At the close of the market on 10th July he was long 5500 shares for which he owed his broker more than $18,000.00. Over the weekend, a fellow townsman (one MacDonald who was considered by Ossie Villeneuve to be a "close follower of the stocks") greatly disturbed Ossie Villeneuve by making some reference to the Exchange's action on the Windfall Company stock. About 8 o'clock Monday morning, Ossie Villeneuve phoned Mr. Wardrope at the Royal York Hotel in Toronto and asked him if he had heard anything, informing Mr. Wardrope of his heavy personal commitment in the purchase of the stock. Mr. Wardrope replied that he had been speaking to the MacMillans the preceding evening as late as midnight, when they had seen him to convey their feeling of unfair treatment and their complaint as to the publicity they had received in the papers without having had the opportunity to tell their side of the story. Mr. Wardrope told Ossie Villeneuve that he had known the MacMillans for twenty years, that they were reputable people, and that he felt they should have an opportunity to be heard; he also said that a statement by the Windfall Company would be made later that morning. Ossie Villeneuve recalls some reference being made in this connection to the name "Cole".

Later in the morning, about 10 o'clock, Ossie Villeneuve again called Mr. Wardrope. To this call, Mr. Wardrope's comment was "I have nothing to add." Ossie Villeneuve recalled that, in the interval between his two conversations with Mr. Wardrope, he met Alfred Andrews on the street in Cornwall, at which time they discussed the rumours concerning the Windfall core. Ossie Villeneuve said "I guess this is genuine." To Alfred Andrews' query "Are you sure of it", Ossie Villeneuve replied by referring to his conversation with Mr. Wardrope and the good opinion which Mr. Wardrope had expressed of the MacMillans' reputation. Ossie Villeneuve was certain that he did not receive from Mr. Wardrope any figures as to assay results or any information of core values. In this connection he corroborates the evidence of Mr. Wardrope.

In Mr. Wardrope's testimony, he said that his recollection of his conversations with Ossie Villeneuve corresponded to the account given by Ossie Villeneuve; that during this time he was the recipient of numerous calls and enquiries as to Windfall, and that in all his answers he had been consistent in that, having no information, he had no information to give.

Considerable time and attention in the public sessions of the Commission, as well as in the investigations carried on by the Commission staff, were devoted to the issues touching these activities of Mr. Wardrope. In fact, it was suggested in the public press that special treatment was being given to this phase. This statement accurately describes the scrutiny which was given. This was not because any leniency was shown, but because, where adverse public comment had been directed to the conduct of a Minister of the Crown, more than normal efforts were deemed to be justified in determining whether the comments related to any conduct unbecoming in one in whom had been placed a post of responsibility and trust. The principle accepted by this Commission in this regard can be simply stated and should require no explanation. If the facts support such comment the public should be so informed. If, on the other hand, the comment is without foundation, the Minister concerned is entitled to have the Commission state its findings to that effect, made after his conduct has been subjected to such an exhaustive review as to leave no issue uninvestigated.

It was in the framework of this concept that N. W. H. Cox, an investigator whose ability and experience are unquestionable, was directed to pursue all rumours and allegations touching the subject matter under review involving Mr. Wardrope's name. There was no restriction on the scope of his investigations, and he received such assistance from other members of the Commission staff as he deemed necessary. His investigations and the evidence which has been heard before this Commission disclose no conduct which is not entirely consistent with the discharge of the duties of a Minister of the Crown. Mr. Wardrope had, at no time, any interest, direct or indirect, in the shares of the Windfall Company or in any other company engaged in mining in Ontario. No personal advantage accrued to him from the Windfall Company, from its directors or shareholders, or from companies or persons associated with it.

This section of the investigation cannot be closed without reference to a misquotation of the evidence heard by the Commission, which appeared in the editorial

column of The Toronto Daily Star in its issue of 30th April 1965.[1] The following paragraphs were contained therein:

"The Royal Commission investigating the Windfall affair appears to be giving special kid glove treatment to Ontario Mines Minister George Wardrope.

The first time Mr. Wardrope took the witness stand, he was asked if he benefited in any way, directly or indirectly, from trading in Windfall shares, which boomed and then collapsed so sensationally last summer.

He replied that he had never owned a share of Windfall—which didn't precisely answer the question. But the commission counsel did not pursue the point."

The official transcript of the proceedings before the Commission from which the material in the editorial was quoted reads as follows:

"Q. Mr. Wardrope, it was pointed out at the outset of the hearings of this Commission that we would proceed in phases in a more or less chronological order. You will be asked to appear, sir, in Toronto when we deal with other aspects of the the matters under consideration by this Commission.

However, there are one or two general questions I would like to put to you at the present time. Mr. Wardrope, did you benefit directly or indirectly in any way from transactions involving the acquisition or disposition of shares in Windfall Oils and Mines Limited?

A. No, sir, I did not."

"Q. Did you benefit directly or indirectly in any way from transactions involving the acquisition or disposition of shares in Texas Gulf Sulphur Company Limited?

A. Sir, I have never purchased, sold or owned a share in Texas Gulf. As a matter of fact, my lord, if you will let me say this, I have not dealt in any mining stock in Ontario over the past fifteen years.

Q. That answer, Mr. Wardrope, really eliminates the necessity for the third question I was going to put to you. So my last question is: During the years 1963, 1964 and 1965 did you benefit directly or indirectly in the sale or other disposition of mining claims or mining rights?

A. No, sir, I did not."*

**Transcript p. 773, l. 29 to p. 774, l. 27.*

[1]In its issue of 4th August, 1965, the Toronto Daily Star offered an apology for this misquotation.

XII

TORONTO STOCK EXCHANGE AND ONTARIO SECURITIES COMMISSION OFFICIAL ACTION

During the period from 6th July to 31st July, the action of the Exchange officials in connection with the market activity was limited to a demand made, on 10th July, to the Directors of the Windfall Company, for disclosure of more accurate information of the mineral content of the drill core, and to the series of events directly related to that demand.

Very soon after the opening of trading on 6th July, the officials of the Exchange were aware that the situation regarding the Windfall Company shares was so unusual as to be unprecedented. The jump opening had taken place without the intervention of any Exchange official or the assistance of the Floor Procedure Committee, although two Floor Governors who were not members of the Exchange were present. The violent price movement and the high volume instantly drew attention to what was going on. It was shortly common knowledge that the activity was stimulated by persistent rumours as to the valuable nature of the mineral content of the first drill hole in the Windfall claims, rumours which were fortified by the large buying orders coming from persons in the north, whose sources of information were generally believed to be reliable.

About mid-morning on 10th July, Viola MacMillan telephoned General Graham and made two requests: (1) that 225,000 shares of the Windfall Company received by her on the sale of the claims to the Windfall Company be released from escrow, and (2) that the Exchange permit the sale from the treasury into the market, without any underwriting, of 200,000 shares of Windfall Company. General Graham informed her that the first request would be put before the Filing Statement Committee immediately, but that the Exchange would not depart from its usual practice of requiring an underwriting for the sale of treasury shares by way of primary distribution. At a meeting of the Filing Statement Committee held later that day, it was decided that no part of the 225,000 shares should be released from escrow.

Before General Graham could reach Viola MacMillan to report to her this decision, a meeting of the Board of Governors authorized a demand on the directors of the Windfall Company. This was conveyed to the directors by telegrams in the following order:

"The Governors of the Toronto Stock Exchange because of exceptional activity in the stock of Windfall must insist that your Company make an up-to-date statement to be delivered to the President of the Exchange 234 Bay Street Toronto not later than 9:15 a.m. local time Monday July 13 and to be satisfactory to the Exchange and for release to the public stop if satisfactory statement not delivered as above stock of Windfall will be suspended at the opening on Monday."

General Graham, the President, and Marshall Stearns, the Chairman of the Board of Governors, were given authority to act on behalf of the Governors and to suspend trading if they should not be satisfied with the response to this demand. A

statement referring to the demand was released to the press, but it did not mention the possibility of suspension. Such, however, was the only disciplinary action open to the Exchange.

When Viola MacMillan spoke with General Graham, he not only informed her of the unfavourable action of the Filing Statement Committee, but also told her that the Board of Governors were requiring an informational statement from her. She did not appear to him to be upset and assured him that a statement would be forthcoming, in all likelihood from T. F. C. Cole, Q.C.

On 10th July T. F. C. Cole, Q.C., as Secretary of the Windfall Company, wrote a letter to the Exchange purporting to answer the demand. This letter,[1] which was patently an unsatisfactory answer to the demand, did not come to the attention of General Graham until he reached his office Monday morning.

It was during the weekend following the Exchange's demand that John Campbell became so active. During those days, John Campbell called personally on General Graham on Sunday morning. General Graham also received a telephone call on Sunday evening from The Honourable George Wardrope, and an assurance on Monday morning that a further statement would be forthcoming as soon as T. F. C. Cole, Q.C., who had been delayed through circumstances beyond his control, reached his office.

Before the opening of the market on 13th July, and before T. F. C. Cole's letter arrived, General Graham and Marshall Stearns met to decide whether trading in Windfall Company shares would be permitted to open. Although nothing had been received which could be considered a satisfactory compliance with the Exchange's demand, they were reluctant to suspend trading, as they had been assured that a statement was on its way to them: as a result, trading was permitted to open. Later, when the Windfall Company statement of 13th July[2] was received, its contents were put over the Exchange's wire system.

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[1]Exhibit 112

[2]Exhibit 114, reading as follows:

"I am instructed by the President to furnish the information below set forth. This is with further reference to your telegram of July 10th to the directors of Windfall Oils & Mines Limited.

You are aware that the Company commenced diamond drilling on Lot 9, Concession 1, Prosser Township, one of its three properties in that immediate vicinity.

The first drill hole is intended to test an area indicated by a geophysical anomaly. The hole, not yet completed, entered bedrock after going through 68 feet of overburden. Cutting approximately 300 feet of volcanic rock ending in rhyolite breccia, the drill entered a mineralized graphitic shear zone at 416 feet and remained in it to 530 feet. No further drilling has been done, and the President advises that core samples of the completed portion of the first hole have not yet been sent for assay. Any rumours to the contrary are unfounded.

Facilities for protecting and dealing with core have been lacking and the unexpected interest has made a suitable core shack essential. In the absence of a core shack it is difficult to prepare core for assay. However, on July 7th, the directors authorized construction, and it is expected that suitable facilities will be available promptly as indicated below; the following is a telegram from the drilling company on July 10th:

> 'Rush diamond drill core building about half completed. Expect to be finished by next Monday night. Your bunkhouse should be finished by next Wednesday. Our men having trouble to keep snoopers trying to get information off the property. We will be ready to continue drilling as soon as the camps are finished. Weather very hot.
>
> Bradley Bros., Timmins, Ontario.'

Further work will be advanced according to mining procedure appropriate for the development of what is hoped will prove to be worthwhile properties."

NOTE: The contents of the telegram from Bradley Bros. Ltd. quoted in the statement had been dictated to Edgar Bradley by Viola MacMillan.

On the following day, 14th July, General Graham, Marshall Stearns and W. L. Sommerville attended the meeting, of which an account is given later, at the Securities Commission office. Except for assisting in making public the contents of the statement resulting from this meeting, no further action of any kind was taken by the Exchange with regard to the Windfall Company or its shares.

For reasons which are elsewhere stated, the Exchange was perfectly justified in expecting from the Windfall Company or its directors a frank and truthful answer to the demand it made for information which would have confirmed or denied the rumours concerning the drill core. These rumours were widespread and obviously were affecting the mind of the buying public.

It is difficult to understand why, in the face of all that occurred on and after 6th July, the Governors of the Exchange did not make such a demand earlier in the week. What took place on 6th July seems to have been more than enough to call for action by the Governors, designed to ensure that the Windfall Company would make a statement and give to the public the facts concerning the core. These the Windfall Company had or could have readily procured. Each day that passed only served to accentuate the urgent need to remove the veil of silence by which the contents of the drill core had been surrounded.

If there is reason to criticize the delay in making the demand for information on the directors of the Windfall Company, there can be no question as to the right of the Governors to make the demand they did. Viewed objectively, once they had taken the action which should have been taken earlier, they have advanced no cogent reason for permitting the demand to go unanswered.

The failure of the Exchange to take action earlier, and its failure to press to a conclusion the action it threatened to take, can be explained only by the fact that over a long period there had existed a reluctance to interfere with the continuance of trading. This attitude is indicative of a failure to appreciate fully how necessary to the maintenance of a free market, is accurate information on any matter which affects the market price, and of a failure to recognize the Exchange's responsibility for insisting that a company disclose such information as it has. While this may explain the Exchange's inaction it does not justify or excuse it.

The apparent acceptance of the uninformative statements, coupled with the fact that trading was permitted to continue, had the effect of confirming, in the public mind, confidence in the truthfulness of the rumours and creating the impression that something beyond the bare words of the statement had been made known to the Exchange officials, and that what the rumours alleged concerning the mineral worth of the core had been substantiated by the facts.

The only direct involvement of the Securities Commission in the events concerning the Windfall Company was the initiation of, and participation in, the meeting held on 14th July and the association of its name with the statement issued following that meeting.

When J. R. Kimber, Q.C., the Chairman of the Securities Commission, returned to Toronto on 14th July, John Campbell suggested to him that a meeting be

convened, and that an effort be made to effect some compromise and thus break the deadlock which had arisen between the Exchange and the MacMillans, as a result of the demand of the Exchange for information from the Windfall Company.

It is worthy of note that in the Chairman's absence, John Campbell had engaged himself in activities which brought him into contact with George MacMillan and Viola MacMillan on at least four occasions. He had also spoken to George Gardiner, a former Chairman of the Board of Governors of the Exchange, to The Honourable George Wardrope, Minister of Mines, and to General Howard Graham, the President of the Exchange. He succeeded in treating General Graham with a measure of discourtesy which seriously jeopardized the continuance of the good relations between the Exchange and the Commission.

When the meeting convened in the offices of the Securities Commission, the following were present:

From the Commission

J. R. Kimber, Q.C., Chairman
J. F. McFarland, Commissioner
Dr. M. H. Frohberg, Consultant

From the Exchange

General Howard Graham, President
W. L. Somerville, Executive Vice-President
Marshall Stearns, Chairman, Board of Governors

From the Windfall Company

George MacMillan, President
Viola MacMillan
T. F. C. Cole, Q.C., Secretary

There can be no doubt that, by the time this meeting took place, George MacMillan was fully satisfied that the drill core from the first 570′ of the No. 1 drill hole disclosed no evidence of copper or zinc in commercial quantities. Despite his protestation that the drill at this depth was just entering the interesting zone, he was aware that the hole drilled to examine the conductive material indicated by geophysical instruments had been completed to the depth recommended by Dr. Szetu, that it had traversed the conductive material and had proven the conductive material to be graphitic.

Viola MacMillan stated in her evidence that on 6th July she did not know what the core contained and did not want to know. It is hard to believe that a person with her lengthy background of mining exploration and development, who had placed a value of considerably more than $100,000.00 on the Windfall claims, could contain her curiosity to know what values the drill core contained. If she actually remained in ignorance of the mineral worth of that drill core, it was an ignorance which, for a person of her knowledge, a comparatively casual examination would have dispelled: it can only be concluded that she deliberately chose to remain ignorant in order that she might carry on activities in the distribution of the

Windfall Company shares and otherwise conduct herself in a manner she would not have felt free to do if she had been in the possession of accurate knowledge.

Not more than an hour or two before the meeting, Viola MacMillan spoke to Dr. Ambrose by telephone. This call, which was placed by Viola MacMillan and lasted a considerable time, was the occasion on which Dr. Ambrose made a verbal report. At this time, Dr. Ambrose had completed all the tests and examinations of the core which he had been instructed to make, and he was satisfied beyond doubt that the core contained no commercial quantities of copper, zinc or silver.

During the whole of the meeting, George MacMillan and Viola MacMillan evaded giving any direct answers to questions as to what the drill core disclosed. They confused the main issue raised by the Exchange's demand by directing attention to the undesirability, mine-wise, of making known results until the drill hole was "completed". They succeeded in creating the impression in the minds of the Chairman and the others that the very last section of the core already drilled was good.

In light of the insistence that the drill hole should be "completed" and the core assayed, before any announcement should be made, the discussion turned to the question of how much time would be required to accomplish this. George MacMillan urged that he should not be tied down, and the net result was the preparation of a statement for release which, as written out by the Chairman, read as follows:

"In view of the activity in the shares of Windfall Oils and Mines Limited over the past weeks, a meeting was held yesterday afternoon at the offices of the Ontario Securities Commission with the officials of the Company and of the Toronto Stock Exchange to review the situation.

At this discussion it was established, to the satisfaction of those present, that no assays of drill cores taken from the property have been made to date. No such assays have been made, since the first drill hole of the Company had not yet been completed. Any stories of assay results are unfounded and do not come from the Company.

The Company advised that it will be recommencing drilling shortly to complete the first hole. When this drilling has been completed, the cores will be assayed and the results announced forthwith. This work will take some time. To lessen the possibility of rumours during the period of this work all cores will be under guard. No information will be released by the Company in regard to the cores until the assays are completed.
15th July, 1964"

It would not be accurate to say that all present were satisfied with the statement. It was accepted as the best that could be obtained. Following a minor variation made the next day by T. F. C. Cole, Q.C., the statement was released and went out over the Exchange's wire system at 3:30 p.m. on 15th July.

Before the release of the statement of 15th July, T. F. C. Cole, Q.C., in conversation by telephone with J. R. Kimber, Q.C., informed him that the MacMillans were willing that Dr. Frohberg or Dr. Carlson should look at the core boxes in order to verify the statement made by George and Viola MacMillan that no part of

the core had been sent for assay. J. R. Kimber, Q.C., replied that he did not feel that it was necessary to take any action to confirm a statement which had been made to him by persons of the standing of George and Viola MacMillan, and that he was satisfied by their statement that no part of the core had been sent for assay. Under the circumstances, J. R. Kimber, Q.C., was undoubtedly justified in relying on this statement with respect to the assays.

In his testimony, George MacMillan stated that the offer as to the examination of the core had been made during the course of the meeting held on 14th July. As no other person present at that meeting recalled hearing such a statement, and in the light of the explicit testimony of T. F. C. Cole, Q.C., that his statement to J. R. Kimber had been made as a result of a telephone conversation which he had had with either George or Viola MacMillan on 15th July, there is no doubt that George MacMillan was confused as to the date upon which the offer had been made.

In view of its shares being listed and posted for trading on a recognized exchange, the Windfall Company was relieved, by reason of Section 41 of The Securities Act,* from filing any prospectus with the Securities Commission. Therefore, distribution of its treasury shares through the facilities of the Exchange, and the trading of its shares on the Exchange, were beyond the control of the Securities Commission. Even if it be granted that the action of the Exchange in threatening to suspend the shares of the Windfall Company was an unwise exercise of its authority, no right was thereby conferred on the Securities Commission to concern itself in the matter.

There was no justification for John Campbell's interference which can be accounted for only by his complete misconception of the duties incumbent upon him as director. Through his personal actions over the weekend of 9th July to 13th July, he caused the Securities Commission to appear to the Exchange, as well as to George MacMillan and Viola MacMillan, to be interjecting itself into a situation which actually was one to be resolved by the Exchange and the MacMillans. In pursuing his misdirected course, his conduct to General Graham was inexcusable and redounded to the disadvantage of the Securities Commission. In his report of his actions to his Chairman, he conveyed personal views critical of the Exchange, as well as informing him about his personal contretemps with General Graham.

Under these circumstances, the willingness of the Chairman of the Commission to call the meeting of 14th July is understandable. Viewed from this distance and detached from the atmosphere which prevailed at the time, it appears doubtful if it was the part of wisdom to permit the name of the Securities Commission to be associated with the resultant statement. By doing so, the Securities Commission went beyond its proper sphere. But the unusual conditions under which the meeting was held must be taken into consideration.

Failure to reconcile the legitimate demands of the Exchange for information on the one hand, and the uncompromising resistance of George MacMillan and Viola

*Section 41. "Sections 38, 39, and 40 do not apply to trades mentioned in paragraph 3 or 6 of subsection 1 of section 19 nor to securities, . . .
(b) that are listed and posted for trading on any recognized stock exchange where such securities are sold through such stock exchange, . . ."

MacMillan on the other to what they deemed interference with their independence in the operation of the Windfall Company, would have been attended by serious results. It is impossible to say that, faced with an identical situation, a person placed in the position of the Chairman of the Securities Commission would not have justifiably felt that it was in the public interest that he should lend his assistance to any effort likely to resolve the conflict.

There is no doubt that, if George MacMillan and Viola MacMillan, having the knowledge they then possessed, had displayed at the meeting the candor which the Chairman was entitled to expect, the statement which would have resulted from the meeting would have been of an entirely different character, and would have served to bring to an immediate halt the market action in Windfall Company shares. As it was, this action continued for another sixteen days.

The statement to which the name of the Securities Commission was unfortunately attached went far to strengthen public confidence in the truth of the rumours as to the mineral value of the core. It conveyed to the public the impression that the most accurate and up to date information available to the MacMillans had been given to the Exchange and to the Securities Commission, and that those bodies had found that the rumours as to mineral values widely circulating in brokerage offices and amongst brokerage clients were not incompatible with that information.

Unfortunately, the involvement of the Securities Commission has led many people to place an unwarranted share of the blame for the prolongation of the market activity at the door of the Commission. Even the officials of the Exchange have advanced the thesis that, when the Securities Commission came into the picture, the Exchange was absolved from further responsibility. It may well be that the Securities Commission should not have allowed itself to be drawn into the affair but, since it lacked the authority to take any corrective action, what it did do cannot be advanced as justification for the failure of the Exchange to act.

The full responsibility for the continued trading subsequent to 6th July was that of the Exchange. The Exchange's responsibility cannot be lessened by anything that was done by the Commission or in its name.

XIII

MARKET ACTION

Table 49 is a chart depicting the number of shares traded and the prices at which they were traded during the days from 6th July to 31st July inclusive. The chart has been compiled by the Commission staff from the transaction records of the Exchange. The time at which any trade was recorded by the Exchange was that at which the floor ticket exchanged between the floor traders was time-stamped at the post on the floor of the Exchange. In a period of such active trading, it is possible that the time stamped on the floor ticket might be appreciably later than the time of the trade. These discrepancies, however, are in most cases slight and do not affect the overall picture recorded in the chart.

The basic information as to the sales and purchases of shares of the Windfall Company on the Exchange was collected from an analysis of the trading of each customer as disclosed on the books of the broker or other agent through whom the order originated. In an effort to determine the statistical volume, and the effect on the market of trading by associated traders and accounts, groupings of such traders and associates have been made, and an arbitrary designation has been attached to each group.

"Controlled Companies accounts" refers to the personal accounts of George MacMillan and Viola MacMillan and to the accounts of the incorporated companies, the effective control of which reposed in either George MacMillan or Viola MacMillan or in both."

TABLE 3

SCHEDULE OF MACMILLAN AND MACMILLAN-CONTROLLED COMPANY TRANSACTIONS IN WINDFALL, APRIL 1 TO JUNE 30, 1964

	Control	*Shares Bought*	*$ Bought*	*Shares Sold*	*$ Sold*
V. R. MacMillan	100%	5,500	3,095.00		
G. M. MacMillan	100%	2,500	1,580.00	1,000	539.99
Airquests	100%	4,000	1,957.50	5,000	2,265.19
Golden Shaft	69%	68,896*	44,408.44	97,500	58,081.10
MacMillan P. & D.	100%	43,500	25,915.00	47,400	28,683.81
Variometer Surv.	97%	35,000†	22,727.50	35,000	21,490.65
Vianor Malartic	59%	88,000	54,293.75	108,100	79,247.61
Consolidated Golden Arrow	48%	11,000	6,490.00		
TOTALS			$160,467.19		$190,308.35
		258,396 Shares		294,000 Shares	

Underwriting:

*Golden Shaft	69%	50,000	$ 20,000.00
†Variometer Survey	97%	50,000	$ 20,000.00

"MacMillan Directed accounts" is applied to those accounts maintained in the names of individuals which either George or Viola MacMillan, or both of them, had authority to direct, whether or not such accounts were nominee accounts.

TABLE 4

SCHEDULE OF MACMILLAN DIRECTED ACCOUNTS
SUB-DIVIDED BETWEEN JUNE 26th-JULY 3rd TRANSACTIONS AND
JULY 6th-31st TRANSACTIONS

F/Code	*Name*	*Broker Number*	*June 26-July 3*		*July 6-31*		*Profit or Loss*
			Bought	*Sold*	*Bought*	*Sold*	
105	E. Adrien Jr.	138				2,000	P
105	P. Carscadden	138				1,000	P
105	R. Champaigne	87	1,500	1,500			P
105	J. Devin	138			1,000	500	P
105	J. Holtrop	138				750	P
105	W. Irwin	138	2,000				?
105	N. F. McClocklin	138			500	500	P
105	I. C. MacKenzie	138				3,000	P
105	R. Meixner	138		1,000	1,400		L
105	R. Mills	138				1,500	P
105	S. Mills	138			1,000	1,500	P
105	D. Szetu	138	2,000				P
105	Mrs. D. Szetu*	43			200	2,200	P
105	I. D. E. Thomas	138			3,000	4,000	P
105	E. W. W. Wilcox	138	1,000		1,000	900	P
111	Humphrey	138	1,000		500	1,500	P
111	Mrs. M. Humphrey	87			1,000		L
111	Mrs. M. Oliver	87		8,000	100	7,000	P
115	L. H. Sargent	76	500			20,000	P
122	Dr. Ley	138		2,000	500	4,500	P
124	Dr. McGeachey	138		2,000	500	4,500	P
127	Mrs. Reeves	138		18,500	11,000**	4,500	?
130	Vermac (partial)	138	6,500	9,500		2,000	P
	TOTALS		14,500	42,500	21,700	61,850	

*Related to T & B account but sold on named persons direction.
**Purchases made on falling market July 8th.

"Brokerage Community, non-commission paying accounts" includes house trading accounts and those of members of the Exchange, of partners of member firms and of directors of member corporations.

"Brokerage Community, commission paying accounts" includes accounts of all other persons employed by, or associated with, member firms or member corporations.

"Special information accounts" includes those of individuals associated with the drilling company and others who, before the opening of trading on 6th July, had information upon which they acted, or who were directly influenced by those buying on such information.

"Semi-professional traders accounts" refers to accounts of persons not directly engaged in the brokerage business, but who earn their livelihood or spend a major portion of their time dealing with security trading or some other aspect of speculative mining enterprises.

"MacMillan trading" embraces all transactions of "Controlled Company accounts" and "MacMillan Directed accounts".

The Amending Filing Statement No. 199, which the Windfall Company was required to submit to the Exchange as a result of the purchase of the Windfall claims from Viola MacMillan, filed on 29th May, was not accepted until 24th June, 1964. But it must be borne in mind that the acceptance of Amending Filing Statement No. 1081, filed 21st April, 1964, had approved the underwriting and option agreement dated 22nd April, 1964 between Windfall Company and Moss Lawson & Co. That agreement entered into by Moss Lawson & Co. on behalf of Variometer Surveys Limited (Variometer) and Golden Shaft Mines Limited (Golden Shaft), obligated the optionees to purchase 100,000 shares at 40¢ a share and permitted them to buy a further 900,000 shares at prices ranging from 40¢ to 70¢.

When the Amending Filing Statement No. 199 was finally cleared through the Filing Statement Committee on 24th June, none of the 900,000 under option had been taken down. At this time, of the authorized capital of 5,000,000 shares, there were issued 2,650,000, of which 225,000 shares were escrowed, the latter being 90% of the 250,000 shares received by Viola MacMillan as part payment of the purchase price of the Windfall claims. On 24th June the market price of Windfall Company shares was in the range of 56¢-60¢ and 16,500 were traded on the Exchange.

During the 60-odd trading days in the months of April, May and June, the aggregate number of Windfall Company shares traded was about 2,408,000. This total denotes not more than a moderate volume of trading, although on 20th-22nd April following the acquisition of the Windfall claims by Viola MacMillan from Larche, Rousseau and McKinnon, the number of shares traded was far above the average for those months.

From 24th June down to the close of the market on 3rd July, the market action of Windfall Company shares was not abnormal, save perhaps on 2nd and 3rd July, when the daily volume increased. The price on 3rd July moved between 68¢ and 56¢, closing at 56¢, and the number of shares traded was 43,498. During the 7 trading days in this period, 30%-50% of the daily share volume was attributable to "MacMillan trading".

Daily Trading Activities

July 6

On the morning of Monday, 6th July, the opening price was $1.01. During that day, 1,574,520 shares were traded at prices ranging from $1.00 to $2.00, with a closing price of $1.95. As nearly as can be determined, this remarkable jump opening was brought about by a series of events which occurred over the week-end, the effect of which was heightened by the atmosphere prevailing at the time.

The discovery by Texas Gulf had whetted the public's desire to risk money in a type of gamble which returned large rewards to the winner. This, and confidence that some other mineral deposit must be present close to such a remarkable ore

body as that which Texas Gulf had discovered, ensured ready acceptance of the belief that another mine was at the point of discovery. Everyone wanted another discovery and was anxiously looking for any sign which would give early indication of the expected find

Early Orders

In this atmosphere, rumours began to circulate of the presence of the minerals in the core taken from the first hole drilled on the Windfall claims. The events

TABLE 5

WINDFALL OPENING TRANSACTIONS EXECUTED AT $1.01, JULY 6, 1964

Direct Purchases of Windfall Shares by Drillers and Noranda-Rouyn Residents, also Purchases Made By and Through Their Customers' Men

CUSTOMERS' MAN	C. B. Dixon	R. Brant	W. G. Robertson & J. H. Dadey	I. E. Jones	J. Applegath
BROKERAGE HOUSE	Doherty Roadhouse & McCuaig Bros.	John C. L. Allen Limited	T. A. Richardson & Co.	Housser & Company Limited	G. W. Nicholsen & Co. Ltd.
PURCHASER					
W. Bradley			**30,000**	**8,600**	
E. Bradley		**5,000**			
R. F. Spencer				**18,600**	
Robertson's Clients			*10,000*		
Dadey & Clients			*19,000*		
V. Oille	**10,000**				**10,000**
Applegath's Clients					*28,700*
C. B. Dixon	*10,000*				
I. E. Jones				*8,000*	
Jones' Clients				*8,900*	
R. Brant		*2,900*			
Brant's Clients		*2,000*			
C. J. Lecour			*14,000*		
Totals by Customers Man	20,000	9,900	73;000	44,100	38,700

Total 185,700

---------- **Shares bought by Drillers & Noranda-Rouyn Residents** 111,200

..... *Shares bought by Customers' Men Dealing with Drillers & Noranda-Rouyn Residents and by other Clients of such Customers' Men* 74,500

giving rise to these rumours are elsewhere described. The immediate result of these rumours was the placing of large purchase orders, for execution on the opening of the market on 6th July, by the principals of Bradley Bros. Ltd., Wilbert Bradley, Edgar Bradley and Frank Spencer, as well as by other buyers in the Noranda area to whom the rumour had become known. The whole possibly represented orders for 160,000 shares at the market, and orders with a limit of $1.00 or less for an undeterminable number of shares. Wilbert Bradley placed two orders, one for 30,000 shares at $1.50 or better. The purchase orders for the 97,000 shares, bought for the principals of the company engaged in drilling the property, was bound to have a profound effect on the brokerage community, especially the customers' men receiving the orders. These customers' men and their clients, who were aware of the buying by the drillers, accounted for an additional number of substantial orders. All these orders were introduced into a market in which the supply of Windfall Company stock was already inadequate. The extent of the stimulation by the Bradley-Spencer purchase is set out graphically in Table 5.

The trading between 10 and 10:30 a.m., other than that of the drillers and other Noranda buyers, and special clients of customers' men contacted as a result of those orders, was principally that of the brokerage community. It arose from the use, for their personal accounts, of information coming from customers, including (a) specific reports of mineralization in the core by supposedly informed sources (b) the implications of the nature of the orders and the names of the customers.

Opening of Trading

The opening of trading on 6th July was arranged on the floor of the Exchange without the assistance or supervision of any member of the Exchange. Two experienced floor traders conducted this process. At that time, no records were maintained by the Exchange from which can be gathered any details as to how this operation was accomplished. In the absence of such records it would have been necessary, in order to reconstruct the circumstances of such opening, to examine all orders in the hands of the members of the Exchange at the time of the opening, whether subsequently filled or not. Due to the fact that, in direct contravention of the requirements of the Exchange, nine member firms had either failed to keep, or had destroyed, their unfilled orders before the Commission sought to examine them, no such reconstruction could be attempted. The death since 6th July of one of the floor traders involved leaves as the only available evidence the recollection of the other trader, H. E. Field.

According to Field's memory of that occasion, he and Lecour (the trader who has since died) cursorily matched orders to sell and orders to buy until they established that, at a price of $1.01, all orders to buy at the market or at a limit price above $1.01 could be filled by orders to sell at the market or at a limit price below $1.01. By this means the opening price was fixed and 258,000 shares were traded at this price. It seems reasonable to assume that all orders in the hands of traders which were capable of being filled at $1.01 were effected in the opening minutes of trading. Variation in the times at which trades at $1.01 were reported is prob-

ably due to the physical impossibility of recording such a great number of trades instantly.

The immediate effect of the appearance on the ticker tape of such volume, at a price so much in advance of the closing price on the previous Friday, was to arouse public interest and create widespread buying. The effect of the public interest did not become apparent until after the first 400,000 shares had been traded, around 10:29 o'clock. Of the first 400,000 shares traded, 215,000 shares or 54% were bought by persons whose interest was inspired by special information, or who were influenced by the purchases by those having special information; 136,000 or 34% by members of the brokerage community, and 49,000 or 12% by buyers not within the foregoing categories. The prevalence of rumours as to the mineral content of the drill core added further to the activity, and before the market closed at 3:30 p.m. the price had reached $2.00. 1,574,520 shares had been traded and the "Controlled Companies accounts" had disposed of 433,900 shares, approximately one-half of the shares under option. Early on this day Viola MacMillan had taken two small samples of the core to an assay office in Toronto and during the afternoon had received by telephone the negative reports as to the values of the samples. She communicated these results to no one.

JULY 7

The heavy market activity continued at the opening. Although on the previous evening Dr. Ambrose had, while in Toronto, made a visual examination of the core, which disclosed to him that it contained no copper or zinc in commercial quantities, the only information furnished to the public was the statement released by the Company, prepared from a memorandum dictated to Viola MacMillan by George MacMillan.* This statement did not put a stop to the rumours as to the minerals in the core. If it did anything, it served to confirm these rumours, since persons with even a small knowledge of these matters knew that an assay was not required to determine the presence of copper and zinc in commercial quantities. That could be fixed by a visual examination by a person with the experience of George MacMillan. The opening, high, low, and closing prices on that day were, respectively: $2.00, $2.10, $1.45 and $1.45. During the day, the "Controlled Companies accounts" sold 44,100 shares near the opening and bought 2,600 shares at the down trend later in the day.

JULY 8

After a brief sell-off at the opening, 8th July was a day of relatively quiet trading and steady prices. During the day the "Controlled Companies accounts" sold no stock, but along with the "MacMillan Directed accounts" they accounted for the purchase of 16,500 shares. The rather limited buying, done here and on other days when the market was weak, exhibited a remarkable sense of timing, as it occurred principally on down swings and at low price levels. It is impossible to say whether or not such buying caused a reversal in the downward trend; but in point of fact these purchases did define the low points of most periods in which

*See footnote page 36.

shares were bought under the direction of Viola MacMillan, and the buying did not continue after the price firmed.

July 9

Further sales of 333,200 shares of Windfall Company were made by the "Controlled Companies accounts" on 9th July, the bulk of these coming in the last hour-and-a-half of trading, as rumours giving specific assay result as 2.4% copper and 8% zinc gave further impetus to speculators. When, in the last hour of trading, the price broke through the former high of $2.10, the effect on some of the traders influenced by chart performance introduced a most frantic period of trading. Between that time and the close of trading on 10th July, in a period of approximately 6 hours of trading, 20% of the total number of shares traded in the 19 trading days under review changed hands. The price of the shares, which at the $2.00 mark had been twice that of the opening on 6th July, had again doubled by the close of 10th July. Such trading removed from the market any semblance of order and reduced it to a scene of uncontrollable speculative frenzy.

On the afternoon of 9th July, Dr. Ambrose endeavoured to reach Viola MacMillan by long distance telephone, to communicate to her the results of further tests done under his direction at Kingston. Although he left his number with the answering service accepting calls on behalf of George and Viola MacMillan, neither of these two showed sufficient interest in what he had to tell them to return his call. The complete disregard of the authoritative information which Dr. Ambrose was then able to give from his tests would support the belief that George and Viola MacMillan were already convinced of the absence of value which the tests had confirmed.

July 10

The market opening was delayed 30 minutes on 10th July, and the opening price was 75¢ in advance of the previous day's closing price. The "Controlled Companies accounts" sold no shares until 10:45 a.m. Between that time and noon, in spite of heavy trading volume, 20,000 shares were sold from this source, in a series of small blocks. At 2:30 p.m., when the market broke out over the former high of $3.50 to rise to a new high of $4.00, an additional 53,400 shares were sold by the "Controlled Companies accounts". The gross return to the Controlled Companies from this day's sales were slightly over $300,000.

The abrupt movement around 2:30 p.m followed shortly after the J. H. Crang & Co. wire had carried Eric Scott's optimistic message.

By this date MacMillan trading had been responsible for the sale of 811,200 shares of Windfall Company for a gross return of $1,388,000; and the shares under option were substantially distributed. From that time on, different tactics seem to have been adopted; and while the number of shares sold was much less, the higher prices obtained made the returns correspondingly higher.

After the close of the market on 10th July, the Exchange made its demand on the Windfall directors for further information. The events which followed this

demand are recorded in Chapter XII, and are pertinent to the market activity only as they indicate another influence which may have had a bearing on the withholding by the MacMillans of information, and for the effect on the market which followed the Exchange's failure to enforce its demand.

July 13

At 9:45 a.m. the Exchange put out over its wire a bulletin prepared in the light of the statement of the Windfall Company, dated 10th July. Despite this, there was some uncertainty as to whether trading would be permitted. This uncertainty was reflected in the 80¢ drop in the opening price and in the generally small market for Windfall Company shares. The price at the opening was $3.20 and it fell rapidly to the $2.70 - $2.90 range. At this stage, Golden Shaft bought 5,000 shares, another instance of an opportune purchase, and one which, when added to the purchases of spectulators, appears to have been sufficiently large to stabilize the price. When it became apparent that the suspension would not be enforced, buying on a large scale again raised the price. Subsequently the price rose rapidly, and between 10:50 a.m. and 12:40 p.m., Golden Shaft resold the 5,000 shares bought earlier and sold an additional 25,000 shares at prices between $3.75 and $4.70, for an aggregate amount of $126,000.

The letter which had been delayed to await the signature of T. F. C. Cole, Q.C., was delivered to the Exchange at 2:15 p.m. and was released over the Exchange wire system about 2:30 p.m. Shortly thereafter the price dropped sharply and remained for the rest of the day between $3.60 and $4.05.

July 14-30

From 14th July to 30th July, the sales and purchases through the "Controlled Companies accounts" of comparatively minor character were as follows:

	Bought		*Sold*	
	Sh.	$	Sh.	$
14th July			400	1,625
17th July			2,100	9,385
20th July			13,900	68,715
24th July			1,000	4,650
28th July	6,700	20,690.	6,000	20,500

The volume of trading from 16th July - 24th July inclusive was much lower than that of the preceding days. On 27th July it increased noticeably and moved rapidly downward from $4.50 to as low as $3.15. On 28th July the price dropped from the $4.50 level to below $3.50, and during the day was as low as $2.85. A considerable part of the selling, especially on 27th July, was the result of short sales. None of the investigations made by the Commission gave any reliable support to allegations which had been made that some persons had advance information concerning the results of the assays, which at that time were being done by Swastika Laboratories Limited.

The purchases by the "Controlled Companies accounts" on 28th July again occurred at a point where the price had turned down, and terminated when the prices had firmed. 6,000 of the 6,700 shares purchased were resold later the same day at prices higher than that paid for them.

July 30

The price trend was gradually upward, opening at $3.10 and closing at $4.15. Trading during the final hour accounted for nearly 60% of the day's volume. This followed the appearance on the street of a rumour that the assays of the core showed 3.4% copper and 8% zinc over 120 feet.

July 31

On 31st July Viola MacMillan refrained from placing any orders for the purchase of Windfall Company shares. She explained that this was a result of her apprehension that it would have caused people to think that the purpose in releasing the drilling results had been to drive the price down. This attitude is readily understandable.

MacMillan Influence

It was established that, with exceptions which were too few to have had any significant effect, all the trading of Windfall Company shares in the "Controlled Companies accounts" and "MacMillan Directed accounts" was directed by Viola MacMillan personally and in detail. None of the brokers through whom transactions in these accounts were effected was left any appreciable measure of discretion.

Repeatedly, in her testimony, Viola MacMillan averred that she did not know what she was doing during the days of the great market activity. For the purpose of affording any explanation of the purpose and plan of her trading, her evidence was useless. The actual transactions have been the subject of a very careful analysis by the staff of the Commission, and the results of that analysis have been the only source, save one, from which a pattern of the trading could be drawn. The one exception was the statement which the witness Reynolds said Viola MacMillan made to him in Timmins on the 13th May, 1964. At that time Reynolds asked her what she was going to do with Windfall, and she explained her plan of the action for the stock. Her statement was that she was trying to hold the stock in the area of 55¢ to 65¢ until drilling started. Her plan was then to jump the price at least 10¢, or as she hoped 15¢, in order to force the short sellers to get back in the market. The stock might hit a dollar, and if it did, sellers would never short it again because they had been burned for 25¢ a share.

The drilling started at the end of June. During the three months preceding, in the "Controlled Companies accounts" and the "MacMillan Directed accounts", sales were recorded of over 500,000 shares and purchases of more than the same amount. Toward the end of the month, the formalities in regard to the transfer of the title to the claims, and the exploration work on them, had progressed to a stage where it was possible to estimate reasonably accurately the date at which drilling would start.

The high percentage of this market volume—over 40%—accounted for by transactions which were the result of orders placed by Viola MacMillan justifies characterizing the trading directed by her as "grooming the market", in preparation for the opportunity to dispose of the optioned shares, an opportunity which could be expected to occur when a drill was actually operating on the property.

If the high percentage of the total volume for which Viola MacMillan was accountable does not in itself establish that she was seeking to create a stimulus to the trading of shares in the market, further evidence is provided by another fact. Of the 500,000 sold from and bought by the accounts already referred to, transactions in respect of 223,000 shares (40%) were directed by Viola MacMillan and involved a sale from one of these accounts to another of them. In other words, the order to buy and the order to sell, resulting in a trade recorded on the Exchange, both reached the Exchange through a broker or broker dealer with whom she placed the order. The circumstances surrounding these transactions were such as to warrant the scrutiny of the Crown Attorney.

The trading operations during the period 6th - 30th July resulted in some of the "Controlled Companies accounts" being short and others being long, but the net position was but 14,000 shares lower than it had been at the beginning of the period.[1] Certain arbitrary inter-account adjustments were made subsequently on 10th August but, except for the effect they may have had on minority shareholders and the implications as regard to transfer tax and income tax, they did not affect the overall position of the MacMillan interests. The net result of the market operations in July enhanced the treasury of the Windfall Company by the amount of $490,000, the price of the shares taken down under the option, and brought about an estimated profit for "Controlled Companies" of $1,455,928.[2]

The evidence adduced did not support the conclusion that the purchase of the Windfall Company shares at the opening on 6th July by the drillers and the Noranda purchasers was the result of any collusion between the purchasers and any person associated with Windfall Company or with the underwriters of Windfall Company shares. These purchases were the result of a belief in the truth of the rumour current as to the mineral content of the core of the first hole drilled on the Windfall property, or a conviction on the part of buyers that the prevalent rumours would be sufficient to bring about a rise in the market price of the stock regardless of the truth of the rumours.

The conduct of George and Viola MacMillan during the week-end prior to 6th July was not such as would lessen the circulation of the rumours, or engender any doubt in the minds of people who were aware of what the MacMillans did and said. If the rumours originated with persons other than George MacMillan and Viola MacMillan, full advantage was taken of what was, for the MacMillans, a welcome occurrence at an opportune time.

It is impossible to believe that a person having the knowledge and experience of George MacMillan could have made even a cursory examination of the drill

[1]Tables 6 and 7.
[2]Table 8.

TABLE 6

WINDFALL STOCK TRANSACTIONS

	Golden Shaft	*Variometer*	*Airquests*	*MacMillan Prospecting*	*Vianor Malartic*	*Consolid. Gold. Arr.*	*Mrs. V. R. MacMillan*	*Mr. G. A. MacMillan*	*Total Net Stock Position*	*MacMillan % Control Stock O/S*	*Total Windfall Stock O/S*
Stock Owned (*short*) July 1/64	369,090	162,243	(*80,790*)	26,000	(*40,400*)	131,000	432,900	114,598	1,114,641	39%	2,900,000
Stock Sold—July	208,400	127,900	134,300	212,300	99,200	158,000	12,000	1,000	953,100		
	160,690	34,343	(*215,090*)	(*186,300*)	(*139,600*)	(*27,000*)	420,900	113,598	161,541		
Stock Purchased—July	14,641	5,200	600	19,500					39,941		
Stock Taken Down by Underwriters— July.	450,000	450,000							900,000		900,000
Stock Balances— July 31/64	625,331	489,543	(*214,490*)	(*166,800*)	(*139,600*)	(*27,000*)	420,900	113,598	1,101,482	29%	3,800,000
Inter Company Transfers Aug. 10	306,400	214,490	214,490	166,800	139,600						
Share Position—After Aug. 10 Transfers	318,931	275,053	—	—	—						

Note: Consolidated Golden Arrow short position was covered by the purchase of:

12,000 shares in market August 4
15,000 " " " August 5

27,000

purchased at an average cost of .90¢ per share

TABLE 7

BREAKDOWN OF TRADING WDM SHARES
ON TORONTO STOCK EXCHANGE
BY THE MACMILLANS AND THEIR CONTROLLED COMPANIES

	Percentage Ownership	*No. Shares Purchased*	*Cost*	*No. Shares Sold*	*Proceeds*	*Average Market Price per Share Sold*
Golden Shaft Mines	69%	14,641	$39,766	208,400	$ 510,114	$2.45
Variometer Surveys	97%	5,200	7,601	127,900	227,058	1.78
Airquests, Ltd.	100%	600	921	134,300	287,838	2.14
MacMillan Prospecting	100%	19,500	13,400	212,300	396,902	1.87
Vianor Malartic Mines	59%	—	—	99,200	158,983	1.60
Consol. Golden Arrow	48%	—	—	158,000	361,965	2.29
Mrs. V. R. MacMillan	100%	—	—	12,000	23,590	1.97
Mr. George A. MacMillan	100%	—	—	1,000	1,050	1.05
Total		39,941	$61,688	953,100	$1,967,500*	$2.06 per share

*Before deducting commission and Transfer Tax.

TABLE 8

PROCEEDS AND PROFITS
REALIZED FROM SALE OF WDM SHARES IN JULY 1964
BY THE MACMILLANS AND THEIR CONTROLLED COMPANIES

	Golden Shaft	*Variometer Surveys*	*Airquests Limited*	*MacMillan Prospecting*	*Vianor Malartic*	*Consol. Gol. Arr.*	*Mrs. V. R. MacMillan*	*Mr. G. A. MacMillan*	*Totals*
Net proceeds	$500,112	222,606	282,194	389,120	155,671	354,907	23,111	1,022	$1,928,743
Cost	108,368	68,526	98,039	151,167	72,416	55,523	4,620	299	558,958
	$391,744	154,080							$1,369,785
Add Profit on Aug. 10	20,832								
Intercompany sales	39,123	26,188							86,143
Net Profit	451,699	180,268	184,155	237,953	83,255	299,384	18,491	723	1,455,928

Net proceeds in this table = sale price less commission and Transfer Tax

core and continued to believe it contained copper and zinc in percentages to be considered commercial. As early as 4th July, when four core boxes were taken to Timmins, George MacMillan must have known that the core in them could not be described as "good looking" in the sense that that term would be used in mining. The optimism displayed by George MacMillan and Viola MacMillan over the week-end could not have been supported by the appearance of the core. Even if it assumed that they were misled about the core, any shreds of faith in the existence of commercial minerals in the core, which would have been justification for the specific rumours current on Bay Street on Monday, 6th July, must have been dispelled by the discussion which took place on Monday evening between George MacMillan and Dr. Ambrose, at the MacMillan residence, following the examination of the core; and the continued absence of any categorical denial that the core had commercial minerals, despite the release of statements by the Windfall Company that assays had not been made, was bound to reinforce the belief that a factual foundation for the rumours existed. People having only a perfunctory knowledge of mining and geology were aware that commercial values were accurately predictable within reasonable limits by visual examination.

The urge to distribute the underwritten and optioned stock made it undesirable that any positive statement as to the actual value be made while the distribution was going on. To complete the sale of the Windfall Company shares under option, and to avoid the waste of the period of market grooming which had preceded 6th July, it was necessary that the public be kept unaware of the negative results of the drilling. The disastrous effect on the market price of the assay results released on 30th July indicates that publication on 7th July of what the visual examination had disclosed would have prevented the rise in price that occurred after that date. Elsewhere is a discussion of the misconception of George and Viola MacMillan as to the duty of company officers to make accurate disclosure under such circumstances, to the best of their ability. Without going into the fallacious reasoning upon which they justified their silence, the conclusion cannot be avoided that the uncertainty as to the truth or falsity of the rumours was deliberately allowed to continue, and that the elaborate security measures and the emphasis on the absence of assays were employed to perpetuate the belief that there was some factual basis for these rumours: the evasion of the issue of what was in the core gave support to the belief that the rumours were not pure fiction.

Whether or not it lay in the power of the MacMillans to correct the condition of inadequate supply may be open to question; but neither through the underwriting broker, Moss Lawson & Company, nor through T. A. Richardson & Co. Ltd., to whom selling orders had been given for execution on 6th July, was enough stock made available to achieve a balance between supply and demand—orders to sell and orders to buy at any price close to the closing price of the preceding Friday.

While distribution of 900,000 shares of Windfall Company stock under option was virtually completed during the week 6th - 10th July, and the most urgent necessity to prevent a collapse had passed, the demand by the Exchange on 10th July and the subsequent dealings with the Exchange appeared to fasten Viola MacMillan's attention on efforts to resist what she considered to be unwarranted demands from the Exchange.

Viola MacMillan's ire at the Exchange was of long standing. It had been accentuated by the refusal of the Exchange to approve the purchase of the Windfall claims from her by the Windfall Company at the price, and on the terms, which had been set out in the agreement submitted for the approval of the Exchange. There had been a strong feeling on her part that if the Exchange disagreed with any of her personal decisions, this constituted an unwarranted interference in the management of her affairs. She considered the Exchange's demand to be an attempt to tell her and her husband how to run a mine.

Having found that both the Exchange officials and the Chairman of the Securities Commission agreed that the results of the assays of the core should be promptly disclosed, and having grudgingly agreed to make such disclosure at the conclusion of the drilling of the first drill hole, the MacMillans, and in particular George MacMillan, set out to comply with the letter, but not with the spirit, of the agreement. This they did, first by refusing to accept a fixed time for delivery of the results; secondly, by delaying the resumption of drilling until 18th July, although according to the evidence of Edgar Bradley, the drill crew could have resumed drilling on 15th July; thirdly, by causing slow progress in drilling after 16th July through the employment of one shift per day instead of the two which had been engaged prior to 5th July; and fourthly, by continuation of the drilling to a depth of 870 feet, a point far beyond that which had been recommended by Dr. Szetu as necessary for the complete exploration of the conductive material causing the anomaly. Further time was engaged in splitting the core and taking 27 samples from it, which were not delivered to the assay office until 24th July, and then were left there with no request that the process be expedited.

From 14th July no major financial advantage accrued to the MacMillans as a result of the continued high price. The main advantage lay in the frustration of the demand for disclosure which so bitterly they had resisted. During this period the market price continued at high levels and the number of shares traded totalled 4,415,991. Many people who entered the market after 7th July suffered losses through the complete failure of George and Viola MacMillan, as officers and controlling shareholders of a company, to recognize their obligation to see that trading of the shares of the Company on a public exchange took place in the light of the most accurate information available and without any misinformation capable of correction which had a direct bearing on the market price.

Trading Pattern

It is apparent that all the "Controlled Companies accounts" were treated in the same manner as personal accounts, in that there was no attempt to observe the formalities of corporate practice. In fact, little or no attempt was made to hold meetings of directors or shareholders, even in the companies in which there were appreciable numbers of sharesholders not directly associated with the MacMillans; in direct contrast to the position taken in April by Viola MacMillan that she could not commit the Windfall Company to the purchase of the claims, she displayed no such solicitude when committing the "Controlled Companies accounts" to substantial transactions in Windfall shares.

The transactions entered into in the name of these companies show that they were considered to be one overall operation. A number of Controlled Companies accounts accumulated large short positions, while others remained long, but the overall net positions of the Controlled Companies showed approximately the same number of shares owned at 30th July as at 30th June. When finally, in August, 1964, the Controlled Companies accounts were adjusted by arbitrary transfers between them, at the current market price, the interest of the minority shareholders was substantially affected to the extent shown by Table 9; a result which could only bear out the prevailing idea in the mind of Viola MacMillan that all the "Controlled Companies accounts" were hers to do with as she liked.

TABLE 9
RESULT OF JULY 6 REALLOCATION

	MacMillans		*Minority Interest*	
	Benefit	*(Loss)*	*Benefit*	*(Loss)*
Consolidated Golden Arrow	$ 24,396		$ 26,430	
Golden Shaft Mines Limited		$(*11,592*)		$(*5,208*)
Airquests Ltd.	6,493			
MacMillan Prospecting & Development	29,249			
Mrs. V. R. MacMillan	18,491			
Vianor Malartic		(*39,431*)		(*27,402*)
	$ 78,629	$(*51,023*)		
Net benefit to MacMillans	$ 27,606			

Original Purchase		*Re-allocation*	
Vianor Malartic	124,500 shares	Consolidated Golden Arrow	68,000 shares
		Airquests	13,000 shares
		MacMillan P & D	31,500 shares
		V. R. MacMillan	12,000 shares

TABLE 10
RESULT OF JULY 10 REALLOCATION

	MacMillans		*Minority Interest*	
	Benefit	*(Loss)*	*Benefit*	*(Loss)*
Consolidated Golden Arrow Mines Ltd.	$113,882		$123,372	
Variometer Surveys Ltd.		$(*225,867*)		$(*6,986*)
Net Loss to the MacMillans		$(*111,985*)		

Original Purchase		*Re-allocation*	
Variometer	75,000 shares	Consolidated Golden Arrow	75,000 shares

TABLE 11
RESULT OF AUGUST 10 REALLOCATION

	MacMillans		*Minority Interest*	
	Benefit	*(Loss)*	*Benefit*	*(Loss)*
Golden Shaft Mines Ltd.		$(*185,248*)		$(*83,228*)
Variometer Surveys Ltd.		(*178,471*)		$(*5,520*)
Airquests Ltd.	$183,991			
MacMillan Prospecting and Development	185,148			
Vianor Malartic	49,164		$ 34,164	
	$418,303	$(*363,719*)		
Net benefit to MacMillans	$ 54,584			

This state of mind is exemplified by two instances, the first of which consists of what took place in an account with T. A. Richardson & Co. Ltd., in which all directions were given personally by Viola MacMillan. Up to the time of the events described below, this account, in the name of Vianor Malartic Mines Ltd. (Vianor), was the only account which T. A. Richardson & Co. Ltd. had in the name of any of the "Controlled Companies." Neither at the time of opening of this account, nor later, did T. A. Richardson & Co. Ltd. receive, or ask for, any document or other evidence giving Viola MacMillan authority to bind Vianor by the orders she placed.

Through this account, on 6th July, 169,500 shares of Windfall Company were sold at prices ranging from $1.01 to $2.00. Confirmations were sent in the usual course addressed to Vianor. On either 7th or 8th July, Viola MacMillan came to the office of T. A. Richardson & Co. Ltd. and, at her request, George Hunter opened accounts in the following names: V. R. MacMillan; MacMillan Prospecting and Development Co. Ltd.; Airquests Limited; Consolidated Golden Arrow Mines Ltd.

Viola MacMillan marked in her own handwriting in the ledger sheet of Vianor the particular transactions which she wished to be credited to the various accounts which had just been opened, and the ledger sheets of these accounts were written to comply with her instructions re-allocating the sales. It is a striking coincidence that those sales at the higher prices appear in the accounts in the name of Viola MacMillan and the wholly owned Controlled Companies,* and those at lower prices in the accounts of companies in which the minority shareholders had the greatest interest.

This account-switching after the completion of the transactions was not the only instance, for on 10th July Viola MacMillan directed Breckenridge McDonald & Co to sell 75,000 shares of Windfall Company for the account of Variometer Surveys Limited, a company 97% MacMillan-controlled. At the end of the day, some time between 3:20 and 3:30, when 55,000 of these shares had been sold, Viola MacMillan gave direction that the name of the seller to whose credit these sales should be posted should be Consolidated Golden Arrow Mines Limited, a company of which the MacMillan control was but 44%. The amount of money involved in this transaction was $281,000.

Income Tax Avoidance

Viola MacMillan, during the course of her testimony, casually mentioned "income tax" as an explanation for the substantial short positions which were brought about by the sales of Windfall Company shares by some of the Controlled Companies. The advantage to the controlling group, made possible by the procedure employed, is of such magnitude as to make it anything but a casual matter.

When the same person or group of persons controls two or more companies, of which the profits made from buying and selling shares would attract tax, the payment of income tax may be postponed indefinitely by appropriate methods. The income arising from the purchase and sale of shares, which is subject to tax, is the

*Table 9.

net difference between the cost of the shares and the price at which they are sold. Accordingly, money received from a short sale does not enter into the calculation of income subject to taxation, until the completion of the purchase of the shares to cover the short position. If, at the same time that the short sales are made by one company, another company in the same control owns an equal or greater number of the same shares, delivery to the buyer to cover the short sale may be made from these shares, the second company lending the shares to the first company. The second company does not face paying any income tax, since the shares are carried on its books as an asset at the price paid for them.

To give a practical example—Golden Shaft, one of the optionees, would be able to purchase from the Windfall Company 1,000 shares at 40¢. If these same shares were sold by Golden Shaft at $2.00 per share, a taxable profit of $1,600, less brokerage commission, would have been earned. But if the sale were made by MacMillan Prospecting Company and shares borrowed from Golden Shaft to make delivery, no taxable profit would have appeared on the books of either Golden Shaft or MacMillan Prospecting Company until the controlling group saw fit to have MacMillan Prospecting Company buy 1,000 shares to fulfill its obligation to return the borrowed shares.

In view of the identity of the control, it would be unlikely that the borrowing company would be embarrassed by any pressure from the lending company for the return of the shares. When this procedure involves amounts of money reckoned in the hundreds of thousands of dollars, it serves to increase the working capital available to the controlling group by allowing the retention for their own purposes of money which otherwise would have gone to pay income tax.

On 10th August, 1964, acting under the instructions of their solicitor, George and Viola MacMillan caused all of the Controlled Companies to complete intercompany transactions at 73¢, the then current market price, in order to eliminate all short positions in any of the Controlled Companies. In so doing, the tax advantage which would have accrued to the companies having short positions was sacrificed, as a purchase price was established for all the shares which had previously been the subject of short sales.[1]

Trading of Consolidated Golden Arrow Mines Limited

Another incident which occurred in July, although not concerned with shares of Windfall Company, is of value to record because it affords an example of the market influence by an unusual volume of buying in an operation directed solely by one person. On 10th July, Viola MacMillan asked Breckenridge McDonald & Co. to effect through the Exchange, on the basis of a "put-through", the sale at 25¢ a share of 244,000 shares of Consolidated Golden Arrow; 200,000 to be sold for MacMillan Prospecting and Development Limited, to be bought for the account of George MacMillan, and 44,000 to be sold for Airquests Limited, and to be bought in some accounts directed by her.[2] Breckenridge advised her that she could make the transactions off the Exchange without involving a broker and so avoid the

[1] Table 11.

[2] 20,000 for Lacy Sargent, 3,000 each for E. G. A. Smart, Adele Smart, Josephine Mills, Sinclair Mills, Ronald Mills, Doris Drewe, Norman E. F. McLoughlin, and Percy Carscadden.

payment of $3,660 commission. In spite of this possible saving, the broker was directed to proceed, which he did by effecting a series of separate "put-through" transactions of large amounts. When these appeared on the ticker, the transactions represented an extraordinary increase in activity, compared with the previous day's volume of 850 shares, and the price immediately went up dramatically. Later the same day, sales at 65¢ were ordered by Viola MacMillan, 2,000 shares each from 8 "MacMillan Directed accounts", 7,000 shares for Lacy Sargent and 5,000 shares for George MacMillan.

It is unlikely that, in the absence of a recording of the sale and purchase of the 244,000 shares so "put through", such an advance in price would have occurred. To one of Viola MacMillan's experience, the possible effect of such a series of transactions could not have been unrealized. The arrangement can be looked at as nothing other than a skilfully managed piece of manipulation.

Influence of Trading of Brokerage Community*

The volume of trading attributed to the brokerage community is set out in Table 34. The purchases, at the opening on the morning of 31st July, of 207,000 out of 241,000 shares traded at the 80¢ opening price was the one instance in which the trading of the brokerage community demonstrated a concerted stabilizing effect.

Included in the accounts of the brokerage community are the accounts in which the floor traders have some financial participation. In the case of a not inconsequent number of floor traders (65 out of 251 sampled) or (20 - 25% of those questioned), the terms of employment are such as to contribute to their personal activities on the market. Table 48 sets out some figures which indicate that a substantial amount of some floor traders' incomes may be attributed to trading conducted for the house floor trading account.

Floor Traders

During the month of July, purchases and sales by floor traders accounted for about 12% of the total volume of Windfall Company shares traded. The transactions which went to make up this total seem to have been of two different categories —those of the in-and-out variety involving comparatively small accounts, representing no real investment of funds by the traders, and those of a few traders whose sales and purchases indicated a disposition to take a position. The former had no significant influence on the market, save to inflate the volume, and appear to have been the result solely of a desire to make a trading profit from the short-term change in prices.

Short Selling, a process which is frequently blamed for many of the ills of the security market, and one to which Viola MacMillan had a violent aversion, was present in moderate volume. During July, sales of this character generally had no more adverse effect than would other trading, though there is reason to believe that a great deal of short selling on 27th - 28th July had a depressing effect. The evidence, however, brought out that the rules of the Exchange requiring a short sale to be so declared are not adhered to in a substantial number of cases. If the investor is entitled to be made aware of the bi-monthly stock short position, non-

*See Appendix D.

observance of the Exchange's rule minimizes the value of the information afforded. On other Exchanges where it is mandatory to mark each order either as long or short, there is a greater compulsion to observe the rules.

Northern Traders

Throughout July the trading originating in Timmins and Noranda was, in varying degrees, at a high level. Even if the morning of 6th July be discounted on account of other factors involved, the amount of trading in Northern accounts was impressive. It is understandable that those whose livelihood depends to such a large extent on the mining industry should be susceptible to the lure of the profits others have made from it. No concerted plan can be discovered in the trading. The influence of this trading was strong since the Northern buyers are believed to be close to the source of information and many of them are known to be intimately associated with mining enterprises.

Conclusion

If one excepts the MacMillans and their capacity to affect the market by the release or withholding of the information that they had as to the commercial value of the core, and by the supplying shares of Windfall Company stock to the market, under option, there is no evidence that any person or group of persons deliberately exercised any manipulative influences in the market during July. The very magnitude of the volume of shares traded would in itself increase the difficulty of producing any effect on the price or the volume. The natural influences at work were strong. There is no doubt that knowledgeable people who might be classed as professional or semi-professional traders did, by their trading, make money. This seems to have been the result of taking advantage of the situation and applying their knowledge to it, rather than the creation of that situation for their own benefit. To use an analogy, they played better poker with the cards dealt to them, but they did not attempt to deal from the bottom of the deck.

XIV

RUMOURS AND REPORTS

In a free and open security market where prices are the result of investor decision to buy or to sell, knowledge of the changes in the affairs of a listed company is a major influence on price variation. Hence the desire to be informed as soon as possible of important changes keeps the investor vigilant for any sign which may indicate the advent of news. This eagerness for news makes the broker and the investor alike, in the absence of accurate information, receptive to any rumours concerning the listed company in which he may be interested.

A rumour is "a current story passing from one person to another without any known authority for the truth of it". There are certain characteristics about rumours and the attitude of people to them. The person who launches the rumour must have some interest in having it circulated; and there must be a probability, or at least a possibility, that it may be true. Also rumours travel faster when the subject matter has importance in the lives of the auditors, and their spread is accelerated when actual news about the matter is either lacking or ambiguous. It is also well known that a desire that it be true will widen its circulation, and that in passing from one person to another, it tends to expand. It may gather authority from the alleged importance of its source and from the character of the person who passes it on. Finally its spread can seldom, if ever, be stopped or slowed down by a simple denial of its truth; and it will die only when it is superseded by an authoritative statement of the facts.

The play of these characteristics is readily noticeable in the spread of the rumours of the mineralization in the Windfall core. Exhaustive inquiries have failed to expose any direct chain from the core itself to Bay Street. But the brokerage community and the speculative investors had a constant interest in mining discoveries, an interest which had been concentrated, first on the Timmins area and then on the Windfall claims, by a series of events which have already been described.

The course of the rumours appears to have been from Timmins to Noranda and thence to the Toronto brokerage offices. With minor variations, the early versions all dealt with mineralization in the core, and provided the only explanation which could be offered for the unusual volume of buying orders which confronted the market at the opening on 6th July.

As might be expected, those in a position to know whether or not the rumours were true were almost immediately sought out. Shortly after the opening of the market, E. O. Chisholm and A. G. Schlitt went to Viola MacMillan and asked about the core. Her replies were evasive and of a nature to give encouragement to the possibility of the truth of the rumours. From that time until the release of the assay results on 30th July, the climate of uncertainty and suspense was admirably suited

to the growth of rumours. As time went on these became more definite, referring to specific percentages of copper and zinc and a specific length of mineralization.

The names of persons known to have much knowledge of mining matters became associated with the rumours and tended to confirm them; and the investors themselves, who supported their judgment by buying, added further confirmation. Associated with the rumours, and giving them added impetus, were the reports sent out over brokers' wires and stories in the public press.

The Toronto brokerage offices were places where people expected better information than from any other source, and they were besieged by inquiries from their customers and their branch offices. Frustrated in their efforts to get accurate information, and feeling under compulsion to provide whatever information was available, they gave out such reports as they were able to gather, far too often from sources which themselves were little better informed, if as well, as were the inquirers themselves. It can readily be seen that any statement which appeared on a broker's wire, even if labelled as a rumour, acquired a tone of authority which was lacking in the verbal rumour. In defense of the action of the brokers, it must be said that they would have been equally open to criticism if they had failed to convey to their customers the rumours which were evidently the basis on which the market was acting. However, the fact remains that on the whole the wire messages sent out by the brokers were the foundation for the sales information which the customers' men passed on to eager investors.

On 27th July, twelve telegrams purporting to be signed by George MacMillan, and two bearing the signature of Assay Laboratories, were received in Toronto. All of these were most optimistic. Although extensive investigations were launched immediately it has not been possible to identify the person or persons responsible for sending these messages. If these telegrams were sent in an effort to affect the market, they were largely unsuccessful, as the recipients seemed to have been aware of their spurious nature and little action was taken on the strength of them.

The public press cannot be dissociated from the process of the spread of the rumours. To appreciate fully the position in which the press stands, it must be borne in mind that the function of the press is to report truthfully all the available facts about the matters in which their readers may be interested. A rumour may be a story without foundation in fact, the repetition of which is undesirable, but the existence of the rumour is a fact which the press feels justified in reporting, or is even required to report. The responsibility of the public press in this field varies according to the nature of the publication, or the portion of the publication, in which it appears. The weekly journal in particular, which devotes itself to a special interest such as the shares of mining companies, is not under the same pressure to publish the latest news as is the daily press. The weekly journal should reflect a less hurried and more considered approach. It has more opportunity to verify the rumours which come to its attention and should be better able to assess the effects which might flow from the repetition of an unfounded story. Its readers look to it not so much for the latest news as for a more reasoned analysis of the news than can be expected from a daily paper, which may have several successive editions each of which has its own deadline.

The financial pages of the daily press stand part way between the weekly journals and their own news columns. From them it can be expected that the experience and special qualifications of their staff members will lead to greater responsibility in selecting what is to appear in the financial pages. As a general rule, their endeavour is to provide the reader with an analysis of the factors affecting the worth of a company.

But an occurrence such as the 6th July trading in Windfall shares has a newsworthiness which carries its appeal beyond the readers of the financial pages. The urge to increase circulation by catering to readers' interests turns attention to the more sensational aspects of the occurrence and overrides the caution with which a responsible financial reporter would normally feel compelled to treat the rumour with which the events of 6th July began. The moderation which usually characterizes the tone of the financial page is replaced by the ordinary techniques of news gathering and reporting; but the reader, who is not discriminating, fails to realize the added need for caution and, because it is the written word, places on it the same reliance that he has been accustomed to place on the financial reports. Here, again, the news column can not disregard the fact that a rumour is current, but by reporting it, wider circulation is given to it. It is brought to the attention of a greater number of people who exercise their human desire to pass it on, and it gains added lustre from having appeared in print.

So long as the suspense or uncertainty as to the actual mineral content of the core was permitted to continue, it was inevitable that the press would continue to report each day the current variations of the rumour, together with the embellishment which those same rumours gathered as they went the rounds.

Under these influences, the process of expanding the rumours went on, despite denials that there were no assays, until the rumours were finally stopped, in the only way a rumour can ever be stopped, by an authoritative statement as to the whole truth.

XV

CAUSES

The first commitment of this Commission was "to investigate, inquire into, and report upon the events involved in, and the causes of, the recent fluctuations in the prices of the shares of Windfall Oils and Mines Limited." In the foregoing chapters of this part, an attempt has been made to set out fully the events which have been considered to be relevant. It would not be inaccurate to say that most, if not all of them, in one way or another were the causes of the rise and fall of Windfall Company shares.

What is remarkable is the way the events combined to produce together results which none of them alone could have produced. It is hardly conceivable that there should again be such an unusual concurrence of incidents as those which contributed to the market action of Windfall Company shares in July of 1964.

Not everything that occurred was consciously directed to stimulating the market activity. A number of uncontrollable factors played an imporant part, and without them it is unlikely that such violent fluctuations would have happened. Thus even those must be included in a review of the causes.

A remarkable propensity to buy and sell shares of speculative mining companies had grown up in Ontario over the years. This speculative fever, latent but kept alive by great faith in the possibilities of the Timmins area, required something, but not very much, to reactivate it. What was necessary was provided by the remarkable find of copper, zinc, and silver made by Texas Gulf. The attention which was focused by this discovery on the townships north of Timmins was increased by the belief that such hidden mineral wealth could not exist in the Texas Gulf property without an ore body of comparable value being located in the immediate vicinity. This caused the public to look upon each property in the area as a potential second Texas Gulf.

The interest thus aroused was concentrated on the Windfall claims by what preceded and accompanied the purchase of these claims for the Windfall Company. The presence of an airborne anomaly on them had attracted the attention of Texas Gulf, which had attempted unsuccessfully to stake them. Whether this interest had been serious may be doubtful; but it was known to some people that representatives of the Noranda Explorations Ltd. had expressed some interest in acquiring the properties; and the long years of experience which George MacMillan and Viola MacMillan had had in mine finding had developed public faith in their integrity and ability, and led people to believe that their interest in the property indicated its special possibilities. The extraordinarily high price paid for the property, one of the highest which had been recorded during the whole of the staking boom, was bound to impress the public with the singular qualities of these claims. All these events singled out the Windfall claims as probably the best prospect for the discovery of the expected mine.

The interest so directed to the Windfall claims intensified as the time approached when the drill was expected to disclose whether commercial minerals were contained in the property.

Other more direct causes which have been described led to the remarkable buying splurge on the morning of 6th July, and launched the weeks of market activity which followed. Much of the buying which took place on that morning could not have been predicted, certainly could not have been arranged.

It is significant that all the stories which circulated over that week-end, and which led to the buying on Monday morning, related to a specific fact: that there were minerals in one particular core. As early as the afternoon of Saturday 4th July, a source for these rumours can be found in statements made by the driller, Boucher, and by George MacMillan himself. Coming from this source, the rumours were bound to find attentive ears; and the extraordinarily large buying orders of those associated with the drilling company performing the work on the Windfall claims acted as a confirmation of the rumours already in existence.

It is impossible to say that these rumours were deliberately circulated by George and Viola MacMillan; but it is a fact that, due to their interest in companies which held options on Windfall Company shares, substantial benefits could accrue to them by the acceptance of these rumours. Throughout, all their conduct was such as to heighten the element of suspense and promote a belief in the rumours. Everyone who had any slight knowledge of mining conditions knew well that a visual examination of the core which had come out of the Windfall claim would have enabled George MacMillan to form an accurate opinion as to whether or not the mineralization in that core was commercial; and the absence of any categorical denial from him was, in effect, a strong confirmation.

The magnitude of the buying orders which faced the market on 6th July provided the impetus which started spectacular market activity. The immediate influence of the buying orders of the drilling executives and knowledgeable mining people in Northern Ontario brought into the market an unusual wave of public buying. The very considerable participation of the brokerage community, which represented a substantial proportion of the trading of the Windfall Company shares, was another very powerful influence in attracting into the market those who were susceptible to influence by the market action itself.

At any time after the opening of the market on 6th July, had George and Viola MacMillan seen fit to make a frank statement regarding what was in the drill core, the unusual market action would have been appreciably slowed if not stalled. During 6th July and the days which immediately followed, until the shares of Windfall Company under option had been distributed, any such statement would have been detrimental to their interests. Not only did they refrain from telling the truth, but in such statements as were made, the facts which were stated and the manner in which they were framed were such as to be misleading and must have been calculated so to be.

The very momentum of the market required some explanation; and the public press sought to provide this by reporting what the rumours were that, at this

stage, alone could have accounted for the behaviour of the market. The newspapers did, indeed, style as rumours the various reports as to the value of the core; but the reader whose unquestionable optimism led him to want to believe the good news reacted to the publication of the rumours, when he saw them in print, by accepting them as having some substantial basis.

The brokerage offices, which were besieged by their clients and their branch offices for some confirmation or denial of the rumours, frequently sought to secure further bits of fact from any source available to them. In most cases, their sources of information were no more reliable than the information they already had. In the absence of any facts, what the brokerage community passed on, all too frequently, was the re-circulation of what was already passing from mouth to mouth. The very process of circulation increased the content of the rumours and added to them the weight of the backing of the brokerage firms which were responsible for passing them on.

The protraction of the period of suspense itself lent support to the rumours. As time went on, and no authoritative statement as to the value of the core was given, the impression grew that the Windfall Company knew that the core was valuable and was withholding this information. And as days went by and the rumours were not stopped by a truthful and unequivocal statement, the public felt reassured as to the currently circulating reports.

Also, the association of the Ontario Securities Commission, as well as of the Exchange, with the statement of 15th July, further confirmed in the public mind the belief that both bodies had reasonable ground for assuming that the rumours would be confirmed by the actual facts.

Even if one dissociates the MacMillans from the events leading up to the buying on the morning of 6th July, it still remains true that from that time on they made most advantageous use of the investors' desire to become owners of Windfall Company shares. The distribution to the public of 900,000 shares held under option by Variometer and Golden Shaft was accomplished with great personal profit to themselves. This occurred in a period in which the atmosphere of suspense permitted a most successful distribution, and in which the trading activities directed by Viola MacMillan indicate a very considerable consciousness of what it was necessary to do in order to support a market and accomplish the primary distribution of shares under option.

This brief summary of the elements which brought about or contributed to the Windfall situation is only an attempt to relate the events closely to one another. Those who have read the account of events which took place will readily see the causal influence of the incidents to which reference has been made.

XVI

ONTARIO SECURITIES COMMISSION

The history of securities legislation in Ontario has been dealt with exhaustively by Professor J. Peter Williamson;[1] and a valuable discussion of securities regulation is to be found in the Report of the Royal Commission on Banking.[2] Recommendations for some amendments have recently been made by the Attorney General's Committee on Securities Legislation in Ontario.[3] By reference to these publications, the reader may be informed as to the background and the present standing of securities legislation in Ontario. These reports each within the framework of its own terms of reference have dealt with areas in which reform is needed. Their findings are endorsed and in some respects supplemented.

But as a necessary prelude to what is to be said of the role of the Securities Commission, the scope of its authority must receive some examination.

The Securities Commission having been brought into existence by a statute of the Province of Ontario, that statute is the natural place to look for a statement of its purposes, the responsibilities it is expected to assume, and the powers and authorities conferred on it the better to enable it to perform its function.

However, The Securities Act[4] contains no direct statement of its purpose or the objectives sought to be attained. A reading of the statute discloses but three areas of responsibilities. These may be briefly stated as follows:

(a) The licencing of persons engaged in the business of selling securities;

(b) The acceptance or rejection of a prospectus which a company is required to file as a condition precedent to the trading of its securities in Ontario;

(c) Enforcement powers, including powers of investigation where there is reason to believe that a breach of the Act or the Criminal Code has occurred.

Section 72 of the Securities Act confers on the Lieutenant-Governor-in-Council the power to make regulations, but due to the fact that the power has been exercised sparingly and in respect only of matters which have not related to the definition or clarification of the basic purposes, responsibilities and powers of the Securities Commission, the regulations are of no assistance in enlightening the Commissioners or the public as to the scope of the regulatory power exercisible by the Securities Commission.

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[1]Security Regulation, J. Peter Williamson—University of Toronto Press 1960.

[2]Report of the Royal Commission on Banking and Finance (1964).

[3]The Report of the Attorney General's Committee on Securities Legislation in Ontario.

[4]RSO 1960 Chapter 363.

Public Concept of Securities Commission

In the minds of the public, there exists an impression that the Securities Commission has a commitment generally to protect the investors and that it should be vigilant to seek out, and put a stop to, all practices and procedures which may lead to loss of money by a security buyer. This attitude was expressed in a considerable number of the replies received to a questionnaire which the Commission sent to a cross-section of Windfall Company shareholders, and it was voiced by John Campbell in his evidence dealing with his concept of his function as Director of the Securities Commission.

It may well be that the wide spread publicity given locally to the activities of the Securities and Exchange Commission of the United States, exercising extraordinarily broad powers over those engaged in the security business, both as issuers and sellers of securities, and over the exchanges on which are traded the shares of listed companies, has lead Ontario people to believe that their Securities Commission is similarly designed and equipped for supervising and regulating every phase of the securities industry.

When the protection of the investor is mentioned, a question immediately presents itself—"from what—?" It is obvious that the investor can never be fully protected from himself. The views expressed by the investors in the Windfall Company's shares who answered the Commission's questionaire indicate that a strong urge to gamble lies behind the conduct of many buyers, and that those buyers, judged in the light of their educational background, would have been expected to know enough to protect themselves. Despite their experiences in the Windfall situation, 69% of those replying (67% of the losers and 71% of the winners) said it was likely they would again buy shares of speculative mining companies.

This predilection to gambling lends itself to the manner in which the stock brokerage business is carried on locally, or perhaps it is that the stock brokerage business has adapted itself to the temper of the investors. Those engaged in the brokerage business, while standing ready to serve buyers and sellers of securities who seek them out, do not wait for the investors to come to them, but engage in the promotion of sales and purchases by "hard sell" methods. There is nothing inherently wrong in this method of conducting business, but it must be recognized that it increases the possibility that the investor may be improperly influenced, and disadvantageously affected, in the transactions he makes; and that it adds incentives to the use of improper sales methods. The protection to which the investor is entitled is only from the use of improper methods in the merchandising of securities.

Need For Legislative Definition of Objectives

In the absence of a clear delineation of its purpose, responsibilities and powers, over the years, the Securities Commission has, by administrative practice, established a workable control over the issue of securities of those companies required by the Securities Act to file prospectuses. This has been accomplished by a self-conferred extension of the power exercisible, under Section 44, to reject prospectuses.

The use of the power to withhold acceptance of a prospectus has been exercised most benevolently, and the practice of the Commission has been to adhere to its own earlier rulings, in which it has indicated the requirements to be met in order that a prospectus may be accepted. But, in the last analysis, the decision to reject a prospectus which apparently complies with the statutory requirements must be essentially a discretionary one. It is a well established legal principle that a body exercising such a discretion is required to act judicially. The Securities Commission lacks the benefit of any fixed standard by reference to which it may be determined whether the exercise of its discretion be judicial.

Without being critical of the practical value of the Securities Commission's work in this field, there can be no denying that an undesirable lack of certainty exists as to the requirements to be met by companies tendering prospectuses for filing.

It is reasonable to expect that a person who has familiarized himself with the contents of a statute and the regulations made pursuant to it could, by the exercise of ordinary care, prepare any document for which provision is made in the statute. This would not be so in the case of the preparation for filing of a prospectus required by any of Sections 38, 39 or 40, of the Securities Act. Without some experience of the practices of the Securities Commission, it is doubtful if an acceptable prospectus could be prepared.

As has been said, this is not criticism levelled at the Securities Commission, but is directed toward pointing out the basic inadequacy of the legislation under which it operates. For a truly effective Securities Commission, the prime requirement is that there should be determined, at the legislative level, a clearly defined policy as to the extent and nature of the security regulation to be applied in Ontario, and that this policy should be embodied in a public statute.

In a field which deals with such involved matters as corporate finance, it would be undesirable if such a legislative enactment attempted to include detailed provisions as to all the matters which should be the concern of the Securities Commission. The development and adjustment of effective administrative measures of control to implement the legislation should be left to regulations to be promulgated under the statutes. But regulations should not be the means by which the policy of the Ontario Government should be settled. The proper sphere of regulations lies in the implementing of the policy.

Some Suggested Objectives

Without attempting to give an exhaustive catalogue of objectives, but only by way of illustrating the manner in which the purpose of the Securities Commission might be set out, the following are suggested as worthy of consideration:

1. To ensure to the investor full disclosure of corporate affairs.
2. To regulate the practice of salesmen of securities.
3. To prevent the solicitation from the public of funds in amounts in excess of the legitimate requirements of the security issuer for carrying out the purpose for which the funds are sought from the public.

4. To ensure that a reasonable proportion of the funds solicited from the public reach the treasury of the issuer, and that those engaged in selling securities do not profit unreasonably at the expense of investors.

5. To supervise the fidelity of management to carrying out the purpose for which funds have been solicited from the public.

6. To minimize the influences which inhibit the maintenance of a truly free market for securities.

7. To prevent the undue influence of market prices by manipulative practices.

8. To provide means of enforcing the provisions of the Securities Act and of investigating breaches of that Act and of the Criminal Code in offences related to security sales and purchases.

Regardless of what may be determined as the terms of reference of the Securities Commission, it is essential that there be a clear understanding by the Securities Commission of what is its task. The people who will be protected by its operations must understand what may be expected of it. Those whose operations will be affected should understand the nature and extent of the control to which they are subject.

Management Survey By External Consultants

Assuming that appropriate legislative action is taken to establish the terms of reference of the Securities Commission, the recommendations of the Attorney General's Committee on Security Legislation in Ontario (The Attorney General's Committee) are appropriate and should be implemented. There can be no doubt as to the necessity for recommended courses of action. But to make the internal changes proposed by that Committee would seem to be premature until the scope of the job required to be done by the Securities Commission has been determined, and the extent of the necessary reorganization measured against that job.

It seems the course of wisdom that, when a definition of function has been accomplished, and before embarking on any administration change, an external management survey should be made. There should emerge from this an accurate assessment of the number of staff required, job descriptions for each post provided, organizational charts for lines of authority and communication, and the establishment of salary ranges related to the rates of remuneration prevailing in comparable posts in industry and commerce.

This will lead naturally to the development of the budget requirements to be met if the Securities Commission is to perform its task effectively.

An Independent Commission

The recommendation of the Attorney General's Committee, dealing with the separation of the Securities Commission from the Attorney General's Department and its establishment as an independent agency, is an essential change if the Securities Commission is to assume the role that is expected of it.

The function of the Commission as explained by the Chairman[1] is two-fold:

(a) The establishment of policy

(b) The review of staff decisions.

Section 29 permits any person affected by a direction, decision, order or ruling of the Director to request a hearing and review by the Commission, and provides that, upon such review, the Commission may confirm, revoke, alter or add to the decision under review.

It is inconsistent with the apparently objective process of review that the persons exercising the power should constitute a branch of the Attorney General's Department[2] or, in fact, that they be directly responsible to any member of the government.

It does not seem necessary to enlarge on this matter; the advantages of independence and the disadvantages arising from the exercise of the power by persons subject to the direction of the Attorney General are so patent as to need no exposition.

This independence, coupled with the appointment to the Commission of persons of high qualifications and broad experience in the fields of law, accountancy and finance, will place the Commission in a setting where it can earn public confidence in its supervision of security marketing and the respect of the financial community over whose activities it will be primarily concerned.

Exemption For Listed Companies

Any security statute designed to offer protection to the public should be universal in its application. The present Act prohibits the sale of any security of a mining company, of an industrial company, or of an investment company, until a prospectus has been filed with the Commission. Taken together these definitions extend to every company. However, as has been pointed out, there is a blanket exemption from the prospectus requirements in the case of securities that are "listed and posted" for trading at any recognized stock exchange, when such securities are sold through that exchange. Reference has been made to the manner in which this exemption has led to the primary distribution of shares of mining companies through the Toronto Stock Exchange.[3]

If it be accepted that every company is intended to file a prospectus as a condition of selling its securities, the only justification for the exemption of the securities of listed companies is the presumption that the requirements to be met by the listed company are at least as productive of information as those of the Securities Act. This substitution of the exchange requirement for the requirement of a securities act takes on the appearance of a statutory delegation to the exchange of the duties generally imposed on the Securities Commission. As long as the

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[1] Transcript, page 2643, lines 18-28.

[2] "There shall be a branch of the Department of the Attorney General, to be known as the Securities Branch, which shall consist of the Commission, the director, the registrar and such other officers, clerks, stenographers and employees as are appointed under The Public Service Act, 1961-62." (R.S.O., 1960 C 363-S3 as amended by 1962-1963 C 131 S 3.)

[3] See Chapter IV.

Securities Commission cannot insist that the exchange require, from any company whose securities are listed, a standard of disclosure equivalent to that required in the filing of a prospectus, a company whose shares are listed is actually beyond any control by the Securities Commission. That this is true is borne out by the fact that the Exchange has placed some 400 companies on an exempted list. The Exchange requirements as to a filing statement do not apply to these companies, and they are, accordingly, under no effective requirement as to information.

Ordinarily one would expect that the requirements for the continuance of listing would be more exacting than those of a prospectus section. There are cogent reasons why a company should not be required to file a prospectus if it is complying with the exchange requirements producing at least equal results. But if the Securities Commission is held out to the public as an instrument of protection, exemption from the provisions of the Securities Act should be dependent on whether or not the Securities Commission is satisfied that the exchange, by its rules and practice, is exacting from the listed company information at least as revealing as that which would have been required to be given in a prospectus.

It has been said above that the present situation amounts to a statutory delegation of the Commission's duties to the exchange; if this be so, the Commission should have the right and responsibility to oversee the performance of the delegated duties.

Security Exchange Regulation

At the legislative level there must not only be a clarification of the purposes of security regulation, but also a decision of far-reaching consequence as to whether or not security trading on an exchange should be subject to regulation by an external agency and, if so, the extent of that control. What is involved in this problem has been set out in forceful terms by William D. Douglas, a former Chairman of the Securities and Exchange Commission of the United States.

"Ideally, of course, it would be desirable to have all national securities exchanges so organized and so imbued with the public interest that it would be possible and even desirable to entrust to them a great deal of the actual regulation and enforcement within their own field, leaving the government free to perform a supervisory or residual role. * * *

At the present time, however, I have doubts as to the desirability, from the standpoint of the public interest, of assigning to exchanges such a vital role in the nation's economic affairs, before they adopt programs of action designed to justify their existence solely upon their value as public market places. I have always regarded the exchanges as the scales upon which that great national resource, invested capital, is weighed and evalued. Scales of such importance must be tamper-proof, with no concealed springs—and there must be no laying on of hands. * * * Such an important instrument in our economic welfare * * * must be surrounded by adequate safeguards. Yet it is also obvious that such restrictions must be consistent with the profit motive, which in final analysis is and must remain the driving force in our economy.
* * *

Operating as private-membership associations, exchanges have always administered their affairs in much the same manner as private clubs. For a business so vested with the public interest, this traditional method has become archaic."[1]

There are compelling reasons why a security exchange should be regarded as a self-regulatory body exacting from its members adherence to a high standard of conduct. It is to be expected that the combined wisdom of the members of the exchange would enable them to appreciate the objectives to be sought and the means by which these could be attained. The exchange is favourably situated to assess the performance of its constituency and to determine the areas which call for the greatest vigilance in its supervision. In theory, the Exchange has accepted the role of a self-governing body, but in practice self-regulation on the Toronto Stock Exchange displays weaknesses in three respects. First, rule-making has not kept pace with the ingenuity of those who wish to take advantage of the deficiencies in the rules. Secondly, there is widespread aberration from strict observance of the spirit of the rules. Thirdly, there is woeful lack of any effective surveillance to ensure the adherence to rule; an explanation frequently offered in justification for departure from the rules is that "it is customarily done that way". The attitude which prevails is illustrated by statements made before the Commission by persons whose experience and association with Exchange business were sufficient to qualify them as informed members of the brokerage community.

Q. We have heard evidence earlier there was a series of trades reported at 10:31 a.m., July 13th, in which you yourself sold 2,200 shares to the Waite Reid floor trader at $3.60, while in the same minute you bought from the Waite Reid trader 2,200 shares for four clients of your firm at $3.65—$3.65.

A. Could you tell me who the 2,200 were sold for—a client, or—

Q. You, personally.

A. For me personally?

Q. You, personally.

A. I believe Mr. Hunter used the word "accommodation." The law of the land does not allow you to be principal and agent.[2]

. . . . .

Q. There is also a purchase that went into the Breckenridge, McDonald error account of 15,000 shares at the opening. Will you tell us about that?

A. Yes. Mr. Lecour had 15,000 shares to buy and sell which he couldn't cross. In other words, one side of the trade was for a partner, I presume, and he couldn't cross, and he asked me if I would trade it for him at a cent spread, which I did. It just went into our error account.

Q. You bought at $1.01; it went into the error account and sold it immediately back to him at $1.02?

A. That is correct.

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[1]Securities Regulation—Louis Loss. 1961, Little Brown and Company, pp. 1180-1.
[2]Transcript p. 3554, ll. 12—26.

Q. We have heard this referred to as an accommodation. Is this the general practice on the floor?

A. It is because this is the only way that you can do this without crossing the stock, and most brokers don't like to cross an order against stock that is being purchased or sold for themselves.

Q. This is the procedure that is followed in order that there will not be a cross between the client and the partner's stock or the employee's stock*?

A. That is right.

The high percentage of Windfall Company shares traded by members of the brokerage community raises some real doubt as to whether, if that pattern be typical, the Exchange is maintained for the benefit of the investing public or for the personal convenience and profit of some of the persons intimately associated with it. In short, the question is whether the members of the brokerage community responsible for that trading look upon the exchange as a public securities market or as a private gaming club maintained for their own benefit.

If there were a sincere desire to maintain the character of a public securities market, it would not be unreasonable to expect that Governors of the Exchange could devise effective rules to maintain that character and to impose sanctions for the mis-use of its facilities.

If it is beyond the ability of the Governors to accomplish this end, there can no longer be any justification for leaving in their hands alone the right to govern conduct on the Exchange: the government of the Exchange must in that event be put under the control of some outside authority which will see to the maintenance of its proper character.

Even if the Exchange merits the continuance of its self-governing character by adopting satisfactory rules and showing a disposition to enforce them strictly but equitably, it is essential that some supervision be provided over the manner in which the Exchange performs its self-regulatory function. The supervisory body should not be empowered to examine the operations of an exchange member directly, but should in the first instance confine its attention to examining the effectiveness of the Exchange's supervision of the conduct of business by its members. Any direct control over an individual member should be exercised only when, through the examination of the general performance of the exchange, there appears to be good cause to suspect misconduct on the part of the member.

The constitutional difficulties which face the Province in the matter of the regulation of a security exchange are appreciated. The extent and manner of control will have to fit into the peculiar constitutional problem in Canada. The investor enjoys some protection from fraud in security-dealing by reason of the provision of the Criminal Code dealing with false information, and wash trading—but the element of protection is incidental; it is not the purpose of the Criminal Code. The present provisions of the Criminal Code are not comprehensive and fail to bring within their scope all types of fraud which can be perpetrated in the conduct of today's very sophisticated securities market. Even if the Criminal Code were recast

*Transcript p. 3570, l. 23—p. 3571, l. 17.

so as to bring within its provisions all manner of criminally fraudulent conduct, this would not provide all the sanctions necessary for the proper regulation of operations on a securities exchange. Provincial legislation, which must always remain remedial and regulatory in the field, can properly deal with many practices which are not criminal in their nature, but which it may well be necessary to restrict for the protection of the investor. If Provincial legislation extends into the field of criminal law it will be open to attack as an invasion of the constitutional field of the Federal Parliament.

It would be convenient if all practices which constituted criminal fraud could be described and made punishable under the Criminal Code. Were this result possible, the provisions of any provincial legislation could be correlated with the provisions of the Criminal Code. In this way, the investor would be furnished with protection against both the criminally fraudulent acts and the bad practices which fall short of constituting criminal fraud.

An end to be desired is that all security exchanges in Canada should be governed by identical regulations and what has been accomplished by provincial authorities in achieving uniformity of security regulations points hopefully in this direction. An even more desirable end would be the establishment of a body, with national jurisdiction, to regulate the procedure of all exchanges in Canada. But as a first step, amendments to the Criminal Code to provide a better definition of the offences related to security sales and trading which would reflect the very complex nature of to-day's operations would achieve a larger measure of uniformity of practice in every exchange in Canada.

This would overcome the present tendency which results in different exchanges appealing competitively for the listing of securities, by offering conditions less rigorous than those existing elsewhere.

Financing the Securities Commission

The Attorney General's Committee has also recommended substantial increases in the financial support of the Commission. This is so essential that the choice of the Provincial Government lies between the provision of increased funds at an adequate level to finance the performance of the service it expects of the Securities Commission and the complete abolition of the Securities Commission. Any third course would but serve to perpetuate the condition that now exists, in which the Commission is unable to perform the task which apparently is expected of it.

Until recently the Commission operated at little net expense to the people of Ontario. The revenue generated by it was in most years sufficient to meet the cost of providing its services. If public protection be the purpose of the Commission, self-supporting service is out of keeping with that purpose.

The benefits of the Commission extend beyond the persons from whom it now collects fees—the registrants and companies which file prospectuses. Its vigilance is directed to the whole operation of the financial industry, an industry which is engaged either as principal in selling securities to the public or as broker in effecting transactions on behalf of sellers and buyers. In either capacity the activity of

the industry, and indirectly the amount of public money involved in its transactions, is indicated by the dollar value of transactions. On every transaction in Ontario involving the sale of any security, a tax is imposed under The Security Transfer Tax Act (R.S.O. 1960, Ch. 364). No better index of the scope of the activities of the Commission is to be found than the aggregate of the transfers, subject to tax. Indicative of the revenue which is produced from this source, is the fact that, in the last three fiscal years, tax collected by the Exchange as agent for the Provincial Treasurer in respect of transactions carried out on the Exchange was as follows:

Year ended March 31, 1963—$1,371,390.
Year ended March 31, 1964—$1,542,041.
Year ended March 31, 1965—$2,359,102.

Some portion of the revenue arising from Security Transfer Tax would be an appropriate source for the revenue for meeting the expenses of the Securities Commission.

But, regardless of the source of the increased revenue, the fact remains that an adequate job cannot be expected from any Securities Commission, unless it has the resources to secure the services of people of the required ability and integrity, and enough of them to carry out its function efficiently and promptly.

XVII

TORONTO STOCK EXCHANGE

The actions of the officers and officials of the Exchange during the period 6th July to 31st July have already been recounted. There remains to be considered the role of the Exchange, its place in the financing of natural resource exploration and development and to what extent its regulations and rules, if adhered to, are adequate to ensure that it fulfils its role.

The work of this Commission has been principally concerned with the action of the market during a period of unusual activity. The danger of over-generalization under these circumstances is fully realized; but the evidence brought before the Commission supports the conclusion that the pressure of that period did not create, but only served to make more readily apparent, the weak spots in the structure.

It is obvious that the adequacy of the regulations applicable to the conduct of business on the Exchange and to the dealings of its members, officers and officials must be judged in relation to some fixed concept of the function of a security exchange. The brief presented by the Toronto Stock Exchange to the Royal Commission on Banking and Finance was introduced by the following statement:

The chief function of stock exchanges is to facilitate the purchase and sale of shares as between investors by bringing together in one place orders from those who wish to buy and those who wish to sell. The price at which a share transaction is carried out on the exchange is determined by these forces of demand and supply in such shares at that time, as represented by the best price which one or more investor(s) is willing to pay (the bid) and the best price which one or more investor(s) is willing to accept (the offering).

With this declaration of its purpose, there is no room for disagreement and it is with the primacy of that purpose in mind that the position of the Exchange and the conduct of its members has been examined.

The intention of those who formed the Exchange was, no doubt, to provide a convenient forum in which brokers could purchase and sell securities for their customers. Regardless of the reason for its origin, the only justification for its continuing existence is the service it provides as a public exchange for and in the interest of the investing public. To implement such service it is essential that the members of the Exchange subscribe without reservation to all that is inherent in the notion of a security exchange and its character as a public service body.

There are a number of consequences which flow from the acceptance of that notion. Measured by the standards it implies, it was apparent that in certain instances some of the brokerage community gave to personal benefit an all too high priority. The view that the Exchange was a private gaming club seemed to have motivated them in turning to their own advantage special privileges which were not available to the public. Not all the members of the Exchange shared this view,

but so long as it is permitted to stimulate any appreciable part of the activities on the Exchange, the reputation of the Exchange as a major national securities market, which has already suffered, cannot be restored.

It would be too much to expect any uniformly high standard of performance if it were left to each person to govern his own conduct as dictated by his personal philosophy; obviously rules are necessary to ensure conformity to a minimum standard.

The governing principle behind all rules of the Exchange should be the maintenance of a free, continuous auction market for the sale and purchase of securities by investors, providing the highest possible equality of opportunity to all investors. In this market the members of the Exchange should have the exclusive right, as agents for their customers, to effect security transactions. From this principle, a number of implications follow:

The Exchange as a Separate Corporate Entity

It has been apparent from the testimony before the Commission that the restoration of public confidence in the Exchange, as a national security exchange, will necessitate some fairly drastic changes in its government and in the conduct of its business. The situation facing the Toronto Stock Exchange today is reminiscent of that which confronted the New York Stock Exchange in 1938. What has since been accomplished by the New York Stock Exchange shows what can be done. Since there exists no external regulating agency, the Exchange alone can bring about the necessary changes.

To reap the full benefit of any change, the first basic fact which must be accepted by the members of the Exchange is that the Exchange, to merit public recognition, must be regarded by its members, by the companies whose shares are listed, and by the investors as an entity which exists apart from its members; and that there are relationships between the members on the one part and the Exchange on the other, and also between the Exchange on the one part and the listed companies on the other, that require to be unequivocally stated and unswervingly observed.

If this basic principle is not accepted, the Exchange cannot hope to achieve the proper status of a public institution, and it will continue to be regarded only as a private club to be conducted in accordance with the interests of its members.

The recognition of the existence of the Exchange as an independent entity requires a reconsideration of the function both of the Board of Governors and of the Administrative Staff, and a redistribution of duties consistent with their respective functions.

To the Board of Governors, the delegates of members, belongs the responsibility of laying down policy and determining the sanctions which are to guarantee adherence to that policy. The Board of Governors must also reconsider the decision of the Administrative Staff when anyone affected by such a decision asks for a review on the grounds that the decision does not represent a proper application of established policy.

In keeping with the character of the Exchange as a public institution, all policies, and the rules adopted to ensure their implementation, must be looked upon as matters of such public concern that they are made available to the public. By this means the investor may make an intelligent and informed judgment as to whether he wishes to entrust the transaction of his business to a broker committed to carrying on business as the Exchange requires.

The administration of the Exchange and the conduct of its business, the supervision of the manner in which the members conduct their business on the Exchange, and the initial investigations to determine if the conduct of members is in keeping with the principles governing the Exchange, are matters which should be left to the permanent staff of the Exchange free from any interference by any member. That staff must be competent to discharge the responsibility, and its independence and freedom from influence by the Governors and members must be unquestionable.

There are many administrative matters concerning which information coming to the Administrative Staff should be dealt with by that staff without becoming known to any member of the Exchange. To quote but one example: the tendering of a filing statement which contains information about a listed company should not, prior to acceptance, make data available to members of the Exchange who would be in a position to benefit from, or make use of, the data so furnished.

In these circumstances the Administrative Staff should, in the first instance, review the filing statement and come to a decision as to whether it conforms to the requirements of the Exchange. Anyone dissatisfied with such a decision would have available the review procedure on appeal to the Governors. This would be an infrequent occurrence, and the informaiton in the filing statement would only be revealed to members of the Exchange if the party who appealed preferred to risk such exposure rather than be bound by the judgment of the Administrative Staff. However, the normal procedure, followed in the vast majority of cases, would maintain the information which was submitted within the confines of the Administrative Staff.

Obviously, this separation of functions requires that the members of the Administrative Staff be competent to discharge the responsibilities assigned to them. They must be ready and willing to assume the added responsibility that will result from their independence and freedom from influence by the Governors and members.

The imposition of penalties upon members is obviously a matter which must be reserved to the Governors; but the responsibility of constantly watching the conduct of members, and of initiating investigations necessary to determine if there has been a breach of conduct meriting disciplinary measures, should lie with the Administrative Staff. This is an area in which, for his own protection, no member of the Exchange should wish to interfere. Nevertheless in relation to it, all members should show courageous and unbiased judgment when dealing with instances of misconduct which are brought to their attention by the Administrative Staff.

The Responsibilities and Disabilities of a Broker

The broker assumes an obligation upon holding himself out as ready to execute orders on behalf of investors who seek his services. This may be better appreciated if the customer and the broker are styled respectively "principal" and "agent", and if consideration is given to the legal consequences of the creation of such a relationship.

The law treats the agent's position as one of extreme trust. The agent has authority to make contracts binding on his principal and must give to the principal's business his best efforts dictated by an undivided loyalty. One who places himself in a position where, as agent, he is acting on behalf of another, voluntarily accepts stringent restrictions on his freedom to act on his own behalf. Without attempting to give an exhaustive description of the areas of disability affecting the agent's freedom of action, some of the more obvious are worthy of mention.

An agent must conduct himself so that the interest of the person in whose behalf he is acting is not brought into conflict with his personal interest. An agent may not make for himself any deal which could have been made for his principal within the scope of the principal's instructions; if he does, he is assumed to have been acting on his principal's behalf and the principal is entitled to the benefit of the transaction. An agent must disclose to the principal any fact known to the agent which would be likely to operate on the principal's judgment. An agent may not, in connection with his principal's business, make a secret profit for himself.

These restrictions flow from the recognition of the serious conflicts inseparable from the agency relationship, and from a corresponding recognition that every such conflict must be resolved in favor of the principal.

All the situations in which the interest of an investor may possibly be brought into conflict with the personal interest of his broker, or someone associated with that broker, cannot be described in detail, but the following examples illustrate some of the more common situations of conflict. In outlining some situations of conflict, it is not suggested that the broker of integrity allows his interest to affect the performance of his duty; the intention is only to show the ease with which conflict may develop in not uncommon situations. In all these examples, investor "A" is assumed to have given a similar order to buy "M" stock to a broker "X". The variations are attributable to the capacities in which "X" may be acting other than that of commission broker.

Example 1: "X," at the time he receives "A's" order, has decided to buy "M" stock personally but has not actually written out his order. His personal interest will be served by buying for his own account before he executes "A's" order; but, since his order may have an elevating influence on the market price, his duty is to complete "A's" order before his own.

Example 2: "X's" firm owned shares of "M" stock which it has decided to sell for its own account. "X" is aware that "A's" order, if executed, may raise the price and enable the firm to sell at a higher figure. On the other hand, the sale contemplated by the firm may reduce the price, in which event "A's" order could be filled at a lower price.

Example 3: "X's" firm is the underwriter and optionee of the "M" stock. Since "X" has an interest in the "M" stock being sold, that interest will conflict with the interest of "A".

Example 4: "X" sends "A's" order to the Exchange to be executed by floor trader "Z". "Z" is trading in the "M" stock in an account in which he has a participating interest. The conflict between "A's" interest and that of "Z" is obvious.

Example 5: "X" or a member of his firm is interested in a company which is marketing "M" shares. The conflict here is again obvious.

Keeping in mind the unavoidable conflict that attends the actions of a person acting simultaneously as broker for another and dealer on his own behalf, it is not surprising to find that, immediately following the establishment of the Securities and Exchange Commission in the United States, that body was directed by Congress to study the feasibility and advisability of the complete segregation of the functions of broker and dealer.

After an exhaustive study of security transactions of dealers and the effect on the market of these transactions, the Securities and Exchange Commission arrived at conclusions which were illuminating and are believed to be of equal validity in Ontario.

There appear in the published report of the studies findings that

(1) That the combination of the broker and dealer functions in the same individual or firm involves a conflict of interest which is provocative of abuse of the fiduciary relationship inherent in the brokerage function:

(2) That the survey made by the Commission manifests the prevalence upon the exchange of a type of dealer activity which exerts an undue influence on prices, incites public speculation, leads to disorderly markets and interferes with the effective fulfilment of the brokerage function. These conclusions furnish the basis for fashioning a program for the future.[1]

No similar study has been made in Canada, but there is no reason to believe that these conclusions could not be applied to the local situation. In fact, the investigations of this Commission would support the view that they could.

In the light of the external regulatory means available to it to control the areas of conflict, the Securities and Exchange Commission did not feel justified in bringing about the disruption to the industry which would follow complete segregation, until a period of trial had been afforded to the machinery then recently inaugurated.

The extent of the regulations which have been imposed may be judged by the restriction to which the dealer activities of brokers are subjected. Trading on the floor of the exchange by a member is not categorically prohibited, but if there is such trading, the firm of which the trader is a member must forego engaging in any commission business during the day in which the trading takes place.[2]

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[1]Report on the feasibility and advisability of the complete segregation of the functions of Dealer and Broker 1936. United States Government Printing Office. P. 109.

[2]New York Stock Exchange—Rule 112.

The disqualification from commission business which the member trading imposes on his firm by his election to trade is so effective that the volume of trading by members on the floor, for their own or their firm's account, has been reduced to a completely insignificant amount.

In Ontario, no regulatory body similar to the S.E.C. has been given jurisdiction to regulate the conduct of the Exchange. Hence, the reasons which, in the United States, suggested a delay in the segregation of the dealer-broker functions, are not applicable and no sound ground exists for deferring such segregation. There is no doubt that here in Ontario segregation would be strenuously resisted by the brokerage community who have become indifferent to the undesirable consequences to the investing public which flow from the existing system. But the reason for not proceeding to enforce complete segregation in the United States was the availability of the powerful Securities and Exchange Commission, which could directly regulate the conduct of business on any national exchange. It would seem, therefore, that here in Ontario, where no provisions for external control of the Exchange exist, the complete segregation of function of dealer and broker is logical and, as was said by the Security and Exchange Commission, a consummation devoutly to be desired.

But even if it be assumed that complete segregation between the broker and dealer is not attainable at present, the continued association of these two functions can be tolerated only under conditions which will remove where possible, the undesirable interference which now prevents the fulfillment of the brokerage function. Where complete removal is not possible, the interference may at least be substantially reduced.

One of the conflicts which it is not possible, and in fact not desirable, to remove is that which faces any broker who has more than one customer. Even one who confines his activities to commission business for clients will find that orders received from two customers may create a conflict of interest between them. This type of conflict is not that to which reference has been earlier made, as it does not put the personal interest of the broker in conflict with that of his customer. A broker can bring a wholly unbiased and disinterested judgment to the resolution of the conflict between the interests of two customers.

It is fully realized that those who are familiar with the business of the Exchange are best qualified to decide by what successive stages separation can be accomplished. They appreciate best to what extent it is now feasible, and have the experience necessary to evolve rules which will bring about the attainment of the ends which they decide are desirable. However, the following are recommended as the objectives toward which the rules of the Exchange should be directed:

1. That members, partners and the employees of member firms and officers, shareholders and employees of member corporations, should continue to be allowed to buy securities for investment, provided they retain a record of securities they may buy and sell, which record shall be available for inspection on request by the Exchange and by the customers of the member firm or member corporation with which they are associated.

2. Subject to the foregoing exception, and to the special needs of "odd-lot" business, personal trading should be prohibited, including trading for discretionary accounts of others, by members, partners and employees of member firms and officers, shareholders and employees of member corporations.

3. No member, partner or employee of a member firm, or officer, shareholder or employee of a member corporation, should be allowed to have any direct or indirect interest in any other firm or corporation which buys or sells securities for its own account, or in the transactions of any other individual who buys or sells securities for his own account.

"Buying for investment" and "trading" will, of course, require more exact definition than can be here provided. In some particular cases it may be difficult properly to assign a transaction to one or the other category. Just as in the case of regulation as to "insider trading", it may be necessary to adopt some arbitrary period of retention as one of the determining factors. Even then, cases can be imagined where securities purchased with the bona fide intention that they be retained for a lengthy period would, due to altered circumstances beyond the control of the purchaser, require to be sold earlier than expected. However, it would seem reasonable to provide that any sale which takes place within a fixed minimum time of the date of a purchase should be presumed to have been entered into for the purpose of trading, unless the person involved can satisfy the Exchange that, when made, it was with the bona fide intention of retention and that the sale had been brought about solely by unforeseeable intervening circumstances.

Since the foregoing restrictions are aimed at lessening the dangers to the public from the association of the broker and dealer function, none of them would be applicable to any member, member firm or member corporation which declared itself to be a dealer and ceased to act as a broker. The otherwise undesirable results of such trading activities are referred to in the portion of this section which deals with the influence of trading by the brokerage community.

Such a drastic proposal as that concerning personal trading by the brokerage community has been preceded by exceptionally serious consideration. There has been a full recognition of the impact it would have on many persons whose trading represents a fair part of their income. But the interest of the public investor must be weighed against the adverse effect on those in the brokerage business who have become accustomed to making use of the facilities of the Exchange for their own benefit.

The total income of the brokerage community, whether it be from the commissions earned on the execution of customers' transactions or from activities on their own account, constitutes a charge on the investing public. Save to the extent that members of the brokerage community suffer trading losses, the whole of the commissions and trading profits is finally paid by the investors in the prices they pay for securities. It may be argued that, if members of the brokerage community were not so remunerated by their profits, the cost of the operation of brokerage offices would correspondingly increase. This would require in turn an increase in the scale of commissions to be charged. If that is so, it is an admission

that the investing public is paying a hidden charge and one regarding whose extent it is not informed.

The substantial proportion of the volume of Exchange business represented by the trading of the brokerage community both gives a false impression of the public demand and supply, and brings about an unwarranted increase in the number of persons who look to the industry for their livelihood, together with an increase in the overall cost of the transaction of security business. Many now engaged in the industry have been attracted to it by the opportunity to make personal trading profits in addition to other remuneration; but this is scarcely a justification for expecting it to continue to support those who are surplus to the needs of the public's business.

In defence of this inflation of the volume of exchange transactions, it has been urged that public investors enjoy a market which has a greater continuity because of the increased rapidity with which transactions follow one another when the aggregate number is increased. If the volume of transactions of the public investors is not sufficient to maintain continuity for five and one half hours, five days a week, the question may well be asked whether investors would not be better served by a reduction of the trading period rather than by an inflation in the number of transactions, brought about by the business of the brokerage community. After all, it has never been contended that the interruption of the market for eighteen and one half hours daily is a serious handicap to its continuity. If the market can withstand such a prolonged period of non-operation, it hardly seems probable that the longer interruption resulting from a shorter trading period, or further interruptions during the five and a half hours now provided, would adversely affect continuity. Other security exchanges in other countries find it feasible to operate on comparatively short periods of trading, fixed regularly for each listed stock. The tailoring of the market place to the business to be done would seem to be more logical than the inflation of business to occupy the facilities of a market place not otherwise required.

Commission Advantage

The desirability of the segregation of the function of broker and dealer due to the possibilities of conflict has already been suggested. If the desirability of maintaining a market free from avoidable influences is accepted, the participation in trading on the Exchange by a member of the Exchange, or a member of the brokerage community, is subject to objection even in the case of a member who would forego his commission brokerage business.

The ability of the member of the brokerage community to trade without bearing the impact of the whole regular commission gives to such a person an advantage beyond that enjoyed by the ordinary investor.

Such a person engages in the identical type of transaction in which the public investor is engaged. Yet, the net prices payable by, and the net returns to, the brokerage trader and the public investor differ by reason of the non-payment or the payment of commission. Hence, it cannot be said that they enjoy equal opportunity.

Information Advantage

A member of the brokerage community trading for his own account or the account of his associates enjoys another advantage over the outside investor. He has more readily available such assistance as is to be gathered from the course of the actual transactions which take place on the Exchange. This is particularly relevant to the floor trader; but, even in the case of operations initiated off the floor of the Exchange, the opportunities to get and act on information from the floor are not insignificant, and are enough to disturb the balance of opportunity.

Influence of Tape Action

Many of the orders to buy and sell securities are brought into the market by the "tape action", i.e., the movement of the volume and price indicated by the printed record of each trade sent out by wire all over the country as fast as the machinery of the Exchange can despatch it. This is received in practically every brokerage office. A large number of the persons placing orders to buy and sell securities are influenced by what the tape displays as to volume and price, particularly by unusual volume or unusual movement in price.

No distinction is made on the ticker record between those trades which fill the orders of the brokerage community. Thus, the recording of the trading orders of the brokerage community serves to distort the representation of the demand and supply of stock furnished by the ticker. Much of the professional trading is of the "in and out" variety and provides no true index of any actual decision to acquire or dispose of a security. It more nearly resembles the placing of a bet as to the future movement of the stock involved. Those relying on the ticker as a source of information can be misled as to the mood of the investors.

It will readily be seen that the influence of the appearance of such trading on the ticker tape is such as to cause the reported transactions to become substantially greater than the actual sales and purchases of the investing public. The effect is also likely to be cumulative. For example, the trading in Windfall Company shares reported in the first half hour of trading on the morning of 6th July had a profound influence in bringing into the market investors whose orders raised the price during the day from the $1.00 to $1.25 level to $2.00. Of the first 400,000 shares traded on that morning, 34% were for the accounts of members of the brokerage community. What would have been the result if there had not been such a high percentage of orders from the brokerage community is a matter of conjecture, but it is obvious the market action would have been less violent and the reports of it to the public less persuasive.

Beneficial Effect of Dealer Trading

It has been contended that the trading of the members of the brokerage community has a beneficial effect in providing liquidity and stability: liquidity by increasing the number of opportunities afforded to an investor to buy or sell, stability by decreasing the possibility of variation in price between successive transactions.

It must be borne in mind, however, that trading of this nature is not entered into for the purpose of discharging any obligation on the part of the traders to advance the interests of investors. There is no guarantee that traders will buy or sell unless they feel like it at the time. If at times such trading tends to re-establish equilibrium, this may be the aftermath of activities which have tended to throw the market off balance in the first instance. If the trading is to be justified, it must be capable of defence through a logical analysis of its function in a free security market. To defend it on the basis that its results in practice may be helpful is to evade the question of its suitability to further the ends of a security exchange.

Primary Distribution

If the Exchange be looked upon as a market for the sale and purchase of securities by investors, its function in the economy is the redistribution amongst investors of the monies invested in securities, and not the provision of new capital from public investors by the sale to them of securities not already in the hands of the investors. Viewed thus, primary distribution of securities through the facilities of a major securities exchange is incompatible with the true function of an exchange. The Attorney General's Committee has outlined the many practical disadvantages resulting from primary distribution of mining securities on the Toronto Stock Exchange. There can be no disagreement with all that was said on that subject by the Committee. But even granted that all abuses could be removed by appropriate regulations, the basic objection would still exist: primary distribution of securities has no place on an exchange the purpose of which is to provide, on a very wide basis, a market for an investor to buy from, or sell to, another investor securities which have already entered into the market. For this reason alone, it is recommended that primary distribution of the shares of speculative mining companies be removed from the Toronto Stock Exchange. It is to be noted that this recommendation deals only with the Toronto Stock Exchange, the major security exchange in Canada.[1] A discussion of some of the special requirements for the primary distribution of speculative mining company shares will be provided elsewhere.[2]

The Effect of Listing

The listing of a security on an exchange is, in the mind of an investor, a stamp of approval regardless of how the exchange itself may look upon it. It follows that minimum standards of performance which are meaningful with respect to the class of securities to be listed must be established and adhered to. Those adopted by the Exchange in relation to commercial and industrial companies seem generally to have been realistic and effective. Where the performance of the Exchange has fallen short of what might be expected of it is in the area of speculative mining companies. In particular it is in a reluctance to withdraw the privilege of listing from those companies which have failed to maintain a standard equal to that which was required to be proven to obtain listing.

In defence of this attitude, it has been urged that delisting of the shares of the

[1] Report of the Royal Commission on Banking and Finance. P. 343.

[2] See Chapter XVIII.

dormant company might be prejudicial to the shareholders. These might later benefit by the infusion of new capital into the company. Also, it is argued, the company has made a not-unsubstantial payment to the Exchange at the time of the listing. Neither of these arguments seems to offer a valid reason for not attacking the problem of deciding how far a company should be permitted to fall below the listing standard before it forfeits the right to have its shares traded on the Exchange. The difficulties of this problem do not excuse the lack of some effort to cope with it. Many undesirable consequences have resulted from the comparatively unrestricted use of the "shell" company. A better procedure is urgently required to prevent the continued trading in shares of a company which has virtually ceased to be the same undertaking which was originally listed. The attention of the Exchange should be directed to a solution of this problem.

Right of Exchange to Information

In the realm of corporate information, the Attorney General's Committee has made recommendations which, if implemented, would keep the investor better informed about corporate activities. In addition to the general obligation in this regard, a company which seeks to have its shares listed on any Exchange, and thus to gain all the advantages of listing, assumes a more direct and exacting obligation to the Exchange.

If the Exchange accepts the responsibility of maintaining a free market, it has a direct interest in removing any influence which it believes may be affecting the freedom of action of the market. Given a situation in which the Exchange has reason to believe that unconfirmed rumours as to a company's business or activities are affecting the market price or market volume, the Exchange has the right, and indeed the obligation, to demand from the listed company the immediate disclosure to it or to the public of those facts, the disclosure of which, in the opinion of the Exchange, is essential to the restoration and maintenance of the free market.

What use is to be made of the information disclosed to the Exchange must be for the Exchange to determine. It should release the information only if the benefit to the maintenance of the free market outweighs the prejudice which may occur to the interest of the shareholders; and it should withhold the public release of such information when that release might constitute prejudice to the shareholders or public investors beyond any possible advantage that might accrue.

It follows, from the right of the Exchange to require information, that the Exchange itself must recognize a duty to deal with that information as it considers best in the interests of both the shareholders and the public investors. Since the decision to request information, and the decision as to what use should be made of it, fall properly within the sphere of the administrative staff, when it is decided to withhold from the public any information disclosed by a listed company, that information must also be withheld from the members of the Exchange.

The recognition by a listed company that it is under an obligation to provide immediately to the Exchange any information that is requested is an essential consequence of the listing of its shares. In fact, this consequence extends to the recognition by the listed company that it can have no secrets from the Exchange.

Training of the Brokerage Community

If the performance of the Exchange is to measure up to what may be expected from a public institution, the Exchange must concern itself not only with the rules for the conduct of business but also, to a much greater degree than in the past, with assuring the competence of those engaged in the brokerage business. This includes an understanding of their duties, and a willingness of each to carry out his part. Competence, as it is used here, is not restricted to the ability of the members of the brokerage community to carry on profitably the business of security trading. It includes a knowledge, on the part of each person concerned, as to how his own particular job fits into the whole and what is entailed for him in order that every phase of the operation may be consistent with that of a public institution.

The testimony before this Commission left doubts as to whether at many levels those engaged in the industry had been properly, if at all, instructed in such a way as to develop the attitudes essential to a responsible discharge of their duties to the industry. Perhaps the most notable area was that of the floor traders whose performance to a great extent determines the tone of the whole business of the Exchange.

In Toronto, there is present an element which does not exist in the New York Stock Exchange, the consequences of which do not need to be emphasized. Only members of the New York Stock Exchange may execute floor business on that exchange. By contrast, on the Toronto Stock Exchange, a member may have as many as five attorneys on the floor and he himself is not required to be on the floor to direct the conduct of his attorneys. It is essential that those on the floor in Toronto know all they need to know, accept as a personal responsibility all the rules which apply to them and, as well, have an ingrained appreciation of their function with all its implications together with the desire to comply strictly with all the requirements of the agency relationship.

Some 15% of the floor traders qualified to trade on the floor of the Exchange have some arrangement whereby they share in the profits of the trading which they carry on for themselves alone or, wholly or partly, for others associated with the organizations for which they are traders. In arriving at this percentage, there has not been included those who are members of the Exchange.*

The personal profits of the floor traders have been mentioned only to illustrate the great need for a definite plan for the education and training of those engaged in the industry. This includes the establishment of requirements which must be met before the Exchange permits an individual to engage in the industry in any position in which there is inherent any area where his personal judgment may affect the ethical conduct of the business of the Exchange. There is a need for better qualified persons, who have demonstrated a knowledge of the function of the Exchange and a readiness to act in conformity with it. Such persons are the first essentials to the overall improvement of the conduct of the brokerage community in relation to the Exchange.

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*See Appendix D.

Public Governors

It would engender a greater measure of confidence in the public mind if some means could be devised to keep the public better informed of what goes on within the Exchange. It would lessen the belief that the public is only aware of the final event. The statements released to the public in the past have not been so couched as to encourage an atmosphere favourable to the Exchange.

Improvement in this regard could be accomplished by the appointment to the Board of Governors of one or at most two persons who would not be members of the Exchange. Persons so appointed would be chosen because of the high regard in which they were held in the community and the unquestionable integrity they would bring to the discharge of their duties.

In its brief to the Royal Commission on Banking and Finance, the Toronto Stock Exchange contended that the appointment of outside governors would not necessarily ensure the objective consideration of the public interest. It was argued that, in practice, outside governors would contribute little to the government or regulation of the Exchange, or to the formulation of policy, as they would be unacquainted with the inherent requirements of such a highly specialized operation.

Although lack of experience would be a handicap to such a non-member governor in discharging some responsibilities, there are still important considerations favoring his appointment. He would have an independence such as a President or Chief Executive officer, who holds employment under the Board of Governors, could never have. More important, his presence would stand as an assurance by the Governors to the public that their functions as Governors were being performed in the interest of maintaining the Exchange as a public institution.

Supervision by Exchange

Public confidence in the Exchange cannot be achieved merely by the adoption of adequate rules. The public must believe that the Exchange is prepared to enforce such rules and to discipline those of its members who break them.

In order to achieve this, it is essential that the Exchange maintain a supervision over the business of its members, on and off the Exchange that will enable it to become rapidly aware of any deviation in the conduct of a member. Only by doing so can it state confidently that the business of its members is properly carried on.

To be in a position to give this assurance, the Exchange must constantly have a great deal more information as to its members' activities on the Exchange than it has had in the past. Fortunately its equipment is of a character to make this possible, but the full potential of that equipment has never been realized.

The failure to make full use of the facilities available for scrutinizing the activities of members of the Exchange may have been the result of a feeling that such overseeing of a fellow member's business was an infringement of his privacy. However, if members appreciate fully the significance of the position which should be assumed by the administrative staff, supervision by the staff will become a feature which will best engender public confidence in the Exchange. Nor will

members find that this exposes to their fellow members the business affairs taking place within their own organizations.

It is obvious that, when there is any reason to believe that an infraction of the rules has occurred, there should be immediate access to the complete records of the member organization. This is the only way in which the administrative staff of the Exchange may decide whether the circumstances justify an investigation leading to disciplinary action, or disclose that the suspicions are groundless. Considered in its proper light, the ability of the administrative staff to speak with authority as to the conduct of every member's business is the greatest source of its power to enhance the public image of the Exchange and its members as an integral part of the economy of the country.

XVIII

FINANCING THE MINING INDUSTRY

The importance of the metal mining industry to the economy of Ontario needs no emphasis[1]; there are features about it, however, which make the requirements for its development unique and which call for special consideration.

Unlike most other industries its expansion cannot be accomplished solely by the development of markets. In an ordinary industry, the potential for expansion is unlimited as long as the demand for the product can be maintained and the cost of production can be kept competitive. By contrast, any one mining company can produce in the aggregate no more metal than is contained in the ore brought to the surface. In totality, this amount was fixed, even though not known, before the mine was discovered. Each ton of ore can be mined but once, and the greater the volume of annual production the sooner ore reserves will be exhausted. For this reason the expansion of the industry and, in fact, even the maintenance of a fixed level of production, demand that new mines be constantly brought into production.

The established producing mines expend large sums in the search for new mines,[2] and they provide the resources necessary to develop any potential mine which they find or in which they become interested after it has been discovered by others. But the efforts of the producing mines, although competently directed and adequately financed, have not been the sole means of adding to the mineral production of Ontario.

Mine finding has always proved attractive to individuals not associated with established mining companies, and the efforts of these people have been successful in a sufficient number of instance to make them indispensable in the overall picture of development of natural resources.

It is in connection with the latter type of activity that the major problem of financing the industry is to be found. As has been pointed out to the Commission the process of mine finding entails the successful elimination of unlikely prospects so that, out of 100,000 prospects worthy of some consideration, one may be classi-

[1]See Table 12.
[2]See Table 13.

TABLE 12

MINERAL PRODUCTION IN ONTARIO

In Millions of Dollars

	EARLIEST	1907	PEAK	1964
Nickel	1889	9.5	268.5 (1964)	268.5
Silver	1903	6.5	17.7 (1912)	15.
Gold	1908	.066	125.5 (1940)	80.6
Iron	1896		84.4 (1964)	84.4
Copper	Before 1900		132.5 (1964)	132.5
Zinc	Before 1900		19.4 (1964)	19.4
Uranium	1953		268.5 (1959)	74.3

fied as likely to become a producing mine. Evidence has been furnished to the Commission which shows that in the latter stages of this process, which may be properly designated mine development, there is no serious problem in arranging financing. After properly directed exploration work has been done, including a diamond drilling program to establish the presence and size of an orebody, and a competent engineer of established reputation has reported on the property as a potential paying mine, people can be found who are able and willing to provide the money to carry the mine into production.

The real problem of financing arises at an earlier stage, the exploration stage, when there is not enough reliable evidence available to support a professional opinion favourable to success. At this stage the odds against ultimate success are so high that a project will not be attractive to the usual sources of funds for investment. The value of the undertaking is not capable of analysis in the manner that applies to the ordinary security considered for investment. The only lenders susceptible to the appeal are those who, for the high returns of success, are willing to risk high chances of failure. The tapping of the sources of money available for financing mining exploration is an expensive procedure and, under the best of circumstances, a relatively high percentage of the investor's dollar goes into the cost of raising it.

The willingness of the small public speculator in Ontario to risk the loss of his money, even in a situation like that of the Windfall Company, indicates that there is a source of funds which will support a high level of exploration if it is not discouraged by abuses to which it is subjected.

During the period immediately following the Texas Gulf discovery, many millions of dollars were put to the purchase of shares of companies which could give assurance only that they had the mining rights to properties in the Timmins area. In many less dramatic situations, and under circumstances far different from the unusual ones of that period, a steady stream of money has been provided by the public.

TABLE 13

COST OF PROSPECTING CONDUCTED BY ONTARIO MINES (DBS)

(Taken from Data Supplied by Ontario Mining Association)

YEAR	TOTAL DOLLARS	PER CENT OF EXPENDITURES IN CANADA
1950	1,784,412	33.2
1951	4,185,343	45.5
1952	4,718,009	34.8
1953	5,403,402	30.3
1954	7,027,418	27.0
1955	10,890,546	44.0
1956	11,694,600	24.2
1957	12,716,629	23.5
1958	7,140,825	22.0
1959	7,751,441	18.0
1960	9,384,052	21.5
1961	7,697,073	17.7

Even assuming that the raising of capital from the public investors for mining exploration is expensive, the present means employed in transferring the money of the investor to the exploration work of the property seems to be accomplished by an unreasonably large diversion of funds to the benefit of those engaged in fund raising. Not only does the investor's dollar shrink while finding its way to the treasury of the mining company, but also the control of the mining company, by the same persons who participate in the financing as optionees of the treasury stock provides another possible channel for the diversion of the funds provided by the investing public from the actual exploration work.

Those by whose efforts the funds are raised and those who direct the performance of the exploration work are entitled to be properly remunerated. But there is justification for the belief that, in at least some cases, the profits which accrue to those engaged in raising finances and directing exploration are out of proportion to the money which goes into the actual exploration.

It seems natural to inquire if there is no more orderly and economical way of bringing together those who wish to invest in mine finding and those who really require the money for expenditures on mining properties.

Representations from groups having special interests in mining have urged that the primary distribution of shares of speculative mining companies be retained in the Toronto Stock Exchange. The views of those so closely associated with the problem of mine financing warrant most careful attention. It has been felt that they were not intended to endorse the practices which have lent themselves to the diversion of finances intended to go into mining, but rather to express satisfaction with the flow of money produced by the present system.

The recommendation that primary distribution of speculative mining shares be removed from the Toronto Stock Exchange was made from the conviction that such primary distribution was not properly within the function of a major national security exchange. They were directed at assuring the integrity of the Toronto Stock Exchange as a public security market conducted for the use and benefit of the investor. It was felt that the special needs for the financing of the mining industry might well require that the trading of the shares of mining companies, other than the shares of established producing companies, should be provided for on a separate exchange. The procedures of such an exchange could be specifically adapted to the peculiar needs of the mining industry and would be formulated so as to be applicable to shares of this character. On such an exchange, primary distribution of speculative mining shares, under conditions which would be established by the exchange, would not be inappropriate.

It may well be that a more effective control over the primary distribution of such shares can be accomplished through the medium of an exchange than can be maintained by an outside body regulating the over-the-counter market. The Report of the Attorney General's Committee has suggested that removal of primary distribution of mining shares from the Toronto Stock Exchange would require substantial extension of the work of the Securities Commission. It would seem the course of wisdom, before such extension be put into effect, that serious considera-

tion be given to the possibility of effecting an equal measure of control through a self regulated exchange, designed to deal with the shares of mining companies. There is no need for such an exchange to be completely segregated physically from the Toronto Stock Exchange. Indeed, there are pertinent reasons for considering the possibility that the physical and very advanced mechanical equipment of the Toronto Stock Exchange should be shared by such an exchange.

The essential differences in the needs of these companies and the reasons why persons are interested in buying their shares would, of course, have to be recognized, and a pattern of operations would have to be evolved, geared to their special requirements.

Whether or not such an exchange, and the primary distribution of mining shares on it, would serve the special needs of the mining industry is a point to be considered by persons who are more intimately acquainted with the mining industry and the financial situation. It does seem, however, that these people could lay down better procedures than now exist for the financing of what is one of Ontario's major industries. It cannot be said that an effective system has been tried and found wanting: rather, it appears that a truly effective system has never been tried.

The practices adopted by the Securities Commission and the rules of the Exchange have led to a requirement that, before public financing will be approved, a mining company must own or control a specific property which it proposes to examine. Two results, not in all respects desirable, flow from this attitude.

It is not possible to finance by way of the primary distribution of shares, an exploration company which will provide able direction by experienced people to direct the expenditure of public money in locating properties that best warrant surface and sub-surface examination. Texas Gulf spent in the neighbourhood of two million dollars in the search which led to the discovery of the Timmins copper-zinc ore body. It is safe to say that, even at this cost, with the skilled geological and geophysical methods at their disposal, they stood a better chance of gaining some return on each dollar invested than did the majority of the people who, in early 1964, put many times that amount into the purchase of shares of companies which had acquired some interest in an unexplored and unproven mining property.

The second result of the insistence on the ownership of property as a condition for the approval of public financing has been to encourage the acquisition of properties under conditions which militate against the decision to buy being made as a result of the exercise of sound mining judgment. The urgency shown by one interested principally in selling shares, to gain the proper qualifications necessary for the approval of those shares, often leads to the purchase of properties which, in the light of an opportunity for a more exacting assessment, would never have been bought.

There seems to be every reason why, under proper safeguards, some encouragement should be given to the investment by the public in companies designed to afford the investor an opportunity to share in the fruits of an intelligent search for mineral worth carried on under the direction of people of proven ability and integrity.

The resolution of the problem of financing mining exploration raises considerations which require the attention of persons of great experience and judgment in the various fields affected by it. It would seem desirable to have a study of these problems by representative economists, mine operators and mining engineers, geologists, prospectors, mining promoters, brokers, broker dealers, bankers, and other members of the financial community. Such experts could devote their attention to the special needs of financing the mining industry. They might produce results of an order which would bring to the financing of that industry a degree of the orderliness which now exists in the general financing of industry in this country.

If such a result could be accomplished, the many hardships suffered from the rise and fall of Windfall Company would not have been in vain.

All of which I humbly submit for Your Honour's gracious consideration.

ARTHUR KELLY
Commissioner
Ontario Royal Commission
on
Windfall Oils and Mines Limited

24th September, 1965

APPENDIX A

BRIEF HISTORY OF MINERAL EXPLORATION AND DEVELOPMENT in the PORCUPINE AREA, ONTARIO

HUGH DOUGLAS CARLSON[1]

Prior to the advent of the twentieth century the Canadian Precambrian Shield was not considered by the mining men of the world to be an attractive region in which to prospect for valuable metals and minerals. Gold discoveries had been made in southeastern Ontario and in the Lake of the Woods district, but development work was disappointing and resulted in little profitable production. Iron ore exploration excited some interest but nothing was found comparable to the great iron ranges in Wisconsin, Minnesota and Michigan along the south shore of Lake Superior. In 1883 rock cuts made during the construction of the Canadian Pacific Railway disclosed the presence of nickel-and-copper-bearing sulphide mineral deposits at Sudbury; subsequent exploration and development efforts there have made this locality one of the world's greatest mining and metallurgical centers; however, initial problems in the treatment and refining of the ores and the necessity of building markets and finding new uses for nickel delayed profitable exploitation of the deposits until well on into the first decade of the present century.

In 1903 construction of the Temiskaming and Northern Ontario Railway (now the Ontario Northland Railway) was well under way, as a publicly financed venture of the Government of Ontario. This railway was planned to open up the agricultural, timber and pulpwood resources of large sections of arable land situated north of Lake Temiskaming and south and west of Lake Abitibi. In the late summer of that year workmen labouring on the construction right-of-way discovered native silver in rocks on the shore of a small lake about one hundred miles north of the southern terminal of the new railroad at North Bay, and 3 or 4 miles southwest of Lake Temiskaming. For many months these discoveries attracted little outside interest, and it was not until after the report of Dr. W. G. Miller, first Provincial Geologist of Ontario, was published early in 1905, describing the exceptional richness of the deposits, that a real mining boom started at Cobalt, as the new camp was quickly named. By 1906, exploration and development of the area were in full swing and the next twelve years saw the production of nearly three hundred million ounces of silver from the camp, valued at nearly two hundred million dollars; of this amount nearly eighty million dollars was returned to the shareholders of various local producing mines in the form of dividends or bonuses. The rocky crust of the Shield is well exposed at Cobalt, there being virtually no residual soil nor much glacial debris present in that district; the silver deposits were short, shallow, narrow and often immensely rich veins; it is recorded that at one place a section 50 feet long, 25 feet deep, and 8 inches wide produced some $200,000 worth of ore. These deposits were relatively easily found by relatively simple methods; their develop-

[1]Hugh Douglas Carlson, M.Sc., Ph.D., Resident Geologist, Timmins Area, Department of Mines, Province of Ontario.

ment and exploitation required relatively small amounts of capital investment which in many cases yielded manifold return in very short periods of time; thus was created in Canada a substantial pool of liquid capital favourably disposed toward investment in mining activities, and it is fair to say that Cobalt was the birthplace of the native Canadian mineral exploration industry. Here prospectors, developers, production men, engineers and geologists gained immensely valuable experience and learned some appreciation of the tremendous potential of the Shield as a repository of those metals valuable in the service of mankind.

By the end of the first decade of the present century, prospectors, who had learned their business at Cobalt, fanned out therefrom to the north, east and west and in the next 30 years ranged widely over the whole Shield making the initial discoveries on mineral deposits that eventually developed into productive mining camps at Gowganda, Matachewan, Porcupine, Kirkland Lake, Chibougama, Noranda, Flin Flon, Red Lake, Val D'Or, Long Lac, Malartic, Yellowknife and in many other places. The methods they used consisted essentially and simply of working with a grub hoe and an idea; the latter tool required some knowledge of and familiarity with rocks and minerals of economic interest, and a keen eye for the same; the former required rugged endurance, sanguine temperament and a large capacity for hard work in a society where the economic and political climate did not discourage the efforts of the individual entrepreneur. In this period prospectors took over from railroad builders the great role of pioneering the development of northern Canada.

Gold was first discovered in the Porcupine Camp in the years 1909 to 1911; three of the greatest gold deposits in Canada, the Hollinger, the Dome, and the McIntyre mines, were developed from surface showings found here by venturesome prospectors at this time. There are sufficient surface rock exposures in this area to have allowed the main outlines of its geology to be established by careful, detailed study and mapping of the outcrops; the earnest application of this scientific discipline to mining problems played a large part in the extension, development and successful exploitation of the mineral wealth of the camp; a number of new deposits were found by projection of known geological data and subsequent drilling. In the past fifty odd years more than a score of mines have produced a total of nearly 1,500 million dollars in gold from the Porcupine, making it far and away the most productive gold-mining district in the western hemisphere; nearly 400 million dollars have been returned to shareholders in the form of dividends from these enterprises. Inevitably all mines decline, and in the past few years, as the gold ores became progressively depleted and less profitable, exploration men turned their attention to the possibilities of finding base metal and other mineral deposits in the Porcupine region. The early prospectors had discovered nickel mineralization in Dundonald township some 30 miles east of Timmins and copper-zinc mineralization in Robb township about 15 miles west of Timmins; shortly after the Second World War commercial asbestos deposits were found and put into production near Matheson, some 50 miles east of the Porcupine camp; sizeable concentrations of the valuable refractory mineral magnesite were recognized a few years ago in Deloro township, not far away from the gold deposits. By the early sixties copper and zinc were being produced profitably in the Porcupine district, although on a relatively modest scale.

This great mining camp lies along the southern edge of the so-called "Clay Belt" of northeastern Ontario and northwestern Quebec. Some eight to ten thousand years ago the last of the mighty continental glaciers receded from this part of Canada, and left behind a meltwater lake covering tens of thousands of square miles of the smoothed and flattened surface of the Shield, which the passage of the glacial ice had swept clear of soil cover to the benefit of our southern neighbours. Billions of tons of the finest sediment were carried into the lake by its tributary streams, and these settled to the bottom to build up flat beds of clay which in places reached aggregate thicknesses of more than 300 feet, as the lake waters gradually shrank and disappeared. Thus the "clay belt" effectively obscures the bedrock geology throughout a very large region having excellent potential as host country for deposits of copper, zinc, silver, gold, nickel, asbestos and magnesite.

The building of the railways was intended primarily to promote colonization and the development of agriculture in this region in the early years of the century, to this end the Provincial Government made generous land grants to veterans of various military activities including the Fenian Raids, the Boer War and the First World War. These grants included the surface rights, the timber rights and the mineral rights to the properties concerned. A number of productive farms, established mainly along major transportation routes through the clay belt, attest, despite the harsh climate, to the partial success of these colonization schemes, which, incidentally, were substantially supported by the establishment of good markets for agricultural products in nearby mining communities. Many, if not a majority, of the land grant properties were never used for agricultural purposes; some of these are still held by the heirs and descendants of the original grantees; most, however, have long since been acquired at low cost, especially during the depression years of the thirties, by various lumber and pulpwood companies for the valuable stands of timber on them.

Primarily for two reasons, therefore, very little successful mineral exploration work has been done, until very recently, in the general region lying immediately to the north of the Porcupine gold camp: (1) the bedrock is extensively covered by a thick mantle of glacial debris; (2) much of the region is privately owned and the mineral rights thereon are not available for staking by the public, as are the mineral rights on Crown land.

In the past twenty years, aided by advances made in electronics technology during and subsequent to World War II, the techniques of geophysical prospecting have developed rapidly to great usefulness in mineral exploration; these methods have involved the design, construction, testing and operation of field instruments capable of detecting and measuring significant differences in certain physical properties of rocks, minerals and ores such as their magnetism, electrical conductivity, specific gravity, radioactivity, etc.; these techniques are particularly useful in areas where knowledge of the bedrock geology is limited due to overburden cover.

Late in the fifties the Texas Gulf Sulphur Company began an extensive exploration program, using the new geophysical methods, throughout a large part of the region north of the Porcupine camp. A number of zones of electrical conductivity were found in the bedrock underlying the cover of glacial debris at widely scattered localities in the area; one of the most promising of these conductive zones was found

ie north half of Lot 3, Concession V, Kidd township, about 10 miles north of the
n of Timmins. This property was privately owned and Texas Gulf did not
an option on the ground until 1963; the conductor was drilled in November
t year and the company announced in April, 1964, that it had discovered a
copper-zinc-silver orebody there. This announcement set off one of the largest
rush-property acquisition booms in the history of Canadian mining, and
d widespread exploration efforts throughout the whole region by more than
dred mining companies, large and small.

success of these efforts and others made in the years ahead will depend in
neasure on effective co-operation between government and industry in
collecting, compiling, assessing and interpreting the geological data
private companies in their exploration programs here. Past experience
t the degree of such co-operation can be expected to range from almost
rticularly on the part of the smaller speculative companies, to virtually
t of some of the largest and wealthiest mining organizations.

THE ROLE OF THE GEOLOGIST AND GEOPHYSICIST IN MINERAL EXPLORATION

HAROLD O. SEIGEL*

The Role of Geophysical Surveys In Base Metal Exploration In Canada

The majority of the deposits of copper, zinc and nickel of the Canadian Shield region occur in the form of tabular bodies of over 25% average sulphide content, loosely termed "massive sulphides". These sulphides commonly consist primarily of pyrite and pyrrhotite (sulphides of iron) with enough base metal sulphides (e.g. chalcopyrite, sphalerite and pentlandite, most commonly) to have a metal content of economic interest. Precious metals, including silver, gold and platinum, often occur in association with the base metals, in the same deposits.

These deposits are commonly distinguishable physically from the normal Precambrian rock types in which they occur by means of one or more of the following physical properties.

a) *Electrical Conductivity*

The metallic sulphides listed above, with the exception of sphalerite, the ore mineral of zinc, are relatively good electrical conductors, usually at least 1000 fold more conductive than the rocks and minerals of their environment. The sole and important exception to this rule is graphite, which, when present in sufficient amounts, may have an electrical conductivity comparable to that of metallic sulphides.

b) *Magnetic Susceptibility*

Pyrrhotite, a common iron sulphide constituent of base metal deposits, has a magnetic susceptibility which is high enough to measurably change the earth's magnetic field in its vicinity. Large bodies of high pyrrhotite content can give rise to appreciable magnetic field changes at distances of many hundreds of feet from them. Unfortunately, not all base metal deposits contain pyrrhotite in significant amounts. Magnetite, an iron oxide which is a very common constituent of many rocks, has a far higher magnetic susceptibility than pyrrhotite, so that most magnetic field variations are not due to pyrrhotite. Magnetite, however, sometimes occurs as an accessory mineral in sulphide deposits.

c) *Specific Gravity*

Metallic sulphides have intrinsic specific gravities which are 30% to 100% higher than those of the majority of other rock forming minerals. When present in sufficient concentration, as in most base metal deposits of economic importance, the net increase in mass in the vicinity of the deposit will give rise to a measurable increase in the earth's gravitational attraction in that area.

The three physical properties discussed above, namely electrical conductivity,

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magnetic susceptibility and specific gravity, form the basis of three geophysical methods commonly employed in the search for base metal deposits in the Canadian Shield. Electrical conductivity is utilized in a variety of electromagnetic induction methods wherein the presence of a conducting zone distorts an alternating electromagnetic field. The distortion is detected and interpreted to indicate the presence and location of the zone. At least three basic types of electromagnetic induction methods are presently being employed on ground surveys in Canada and four basic types are used in aircraft conducting aerial surveys. The functions of all of these surveys is to reveal the existence of conducting bodies. None can reliably differentiate between sulphide bodies which contain base or precious metals and those which do not; nor can sulphide bodies in general be differentiated electrically from graphitic bodies. On a statistical basis, there may exist in Canada between 500 and 1000 geologic conductors of no present economic significance for each conductor related to a base metal or precious metal deposit. Despite the seemingly adverse numerical statistics, the net value of a sizable base metal sulphide body (such as that of the Texas Gulf Sulphur Company in Kidd Township, Ontario) makes this type of exploration approach economically justifiable. The electromagnetic methods are commonly used, therefore, as primary exploration tools in the search for base metal deposits.

If the area of search is more than about five square miles in extent it usually becomes more economical to employ an airborne electromagnetic survey, rather than a ground electromagnetic survey as an exploration tool. On really large areas, of the order of 100 square miles or larger, the relative cost of airborne versus ground surveys is about 1 to 7 and the effectiveness, per line mile covered, on the two types of survey can be comparable.

Magnetometer surveys may be employed on the ground or in the air and may, in certain instances, reveal the presence of a base metal sulphide body. The probability of direct detection and recognition of such bodies by a magnetic survey is, however, far poorer than for an electromagnetic survey, for two reasons:

a) about half of our base metal sulphide bodies have no magnetic association, and

b) there are far more bodies of high magnetic susceptibility than there are bodies of high conductivity. For these reasons the magnetic method is used as a secondary or auxiliary one in relation to the electromagnetic (primary) method. A conductor, which at the same time has a high magnetic susceptibility, is very likely to have a sulphide origin—although it need not necessarily be a base metal ore body. A conductor which is quite non-magnetic may lie in any one of the three categories mentioned above. Quite commonly, magnetic and electromagnetic surveys are carried out simultaneously, either in the air or on the ground, at a comparatively small additional cost over that of the basic electromagnetic survey. The magnetic survey then helps to grade conductors, in a relative way, into those more likely to have a significant sulphide content and those less likely, but with a far greater certainty factor in the positive sense than in the negative sense.

Gravimeter surveys, at present, may be employed only on the ground. Whereas there can be many possible sources of positive gravity relief, e.g. a thinning of the

overburden, a basic intrusive body, magnetite iron formation, etc., a body which is at the same time high conductive and of high specific gravity must almost certainly have a high sulphide content. Almost all of the massive base metal sulphide bodies of economic importance in Canada would give rise to positive relief of a measurable amount (0.1 milligals or over). A gravity survey is therefore of considerable value in the search for base metal ore bodies as a method auxiliary to the electromagnetic method to help separate sulphide-rich conductors from those due largely to graphite. As an example of the potential value of such a survey, the Texas Gulf Sulphur ore body is very nearly non-magnetic, but shows up as a decidedly strong positive gravity anomaly. Graphite zones have a specific gravity which is usually lower than that of the surrounding rocks and are therefore almost never associated with positive gravity anomalies.

At the conclusion of a properly executed airborne electromagnetic survey one can produce a plan showing the distribution of the conducting zones in the area covered, usually with some grading as to their intrinsic conductivity. Since all airborne electromagnetic methods are sharply depth limited, usually giving useful results only to within 200′ or less below the ground surface, conductors buried below those depths may not be indicated by such a survey. If a magnetic survey was carried out simultaneous with the airborne electromagnetic survey one would know which conductors have an appreciable content of pyrrhotite or magnetite. These conductors would be favoured over those having no magnetic correlation, although the latter would not be discarded completely on this basis. In studying the airborne electromagnetic data we generally favour those conductors which are of length equal to ½ mile or less, as experience has shown that much larger conductors are usually due to graphitic zones or sulphide bodies of no base metal importance. Airborne survey lines are generally between 660′ and 1320′ apart.

Ground geophysical surveys may be employed on their own, i.e. without reference to any airborne geophysical coverage, or they may be employed as a subsequent phase in an exploration program starting with an airborne survey. The difference between the two cases is primarily that in the former instance, uniform ground coverage is afforded to the entire area of potential interest, on survey lines 200′ to 400′ apart. In the latter case the ground coverage is restricted to those regions where the airborne survey suggests the existence of conducting bodies. In either event, once the ground electromagnetic survey has verified the presence of a conducting zone the zone is usually (but not always) subjected to magnetometer and gravimetric survey coverage. The "not always" is inserted to cover those instances where it is intended to drill all conductors, regardless of supporting evidence. Such a procedure might apply, for example:

a) In a region where the mineralization is quite high grade and possibly non-magnetic (e.g. Kidd Twp. area) so that a relatively (10′ or less) narrow width of non-magnetic sulphides, which might not show up on a gravity or magnetic survey, could be of interest, or

b) Where a small exploration company has only very limited property and is anxious, usually for market reasons, to drill anything at all on that property.

At the conclusion of the ground geophysical work the following information is generally known:

a) *From the electromagnetic survey*; the presence of a conductor, its location, length, maximum depth below surface and some idea of its conductivity times thickness factor. This information is adequate to guide exploratory drilling on the conductor.

b) *From the magnetic survey (if done)*; whether or not the conductor is associated with appreciable pyrrhotite or magnetite. About 50% of Canada's base metal sulphide deposits would have an appreciable magnetic indication.

c) *From the gravity survey (if done)*; whether or not the conductor is associated with rather large amounts of concentrated sulphides (e.g. greater than 50% sulphide content over widths in excess of 10'). About 75% of Canada's base metal sulphide deposits would give rise to an appreciable positive gravity indication.

With the complete three method attack outlined above one can reject at least 90% of all conductors and still leave at least 85% of all potential base metal ore bodies. Even so, such ore bodies are so rare that they constitute possibly only one percent of *all* sulphide bodies. The odds are rather better, however, in an area already known to have such ore bodies, such as Bathurst, New Brunswick; Noranda and Mattagami, Quebec and Timmins, Ontario.

The Role of the Geologist In the Timmins Area

Because of the dearth of outcrops in the vicinity of Kidd Township the subsurface geology is very little known and is largely a matter for conjecture. The Geological Survey of Canada has published aeromagnetic maps of this area, but these are so generalized as to give rather meagre assistance in extrapolating the known geology.

If the geologist is fortunate enough to be able to select a property for investigation in the Timmins area he would try to choose that which is closest to the probable extension of the rhyolite-andesite contact on which the Texas Gulf and Kamkotia ore bodies lie. It is more common that the property selection has already been made before the geologist appears on the scene. If so, the geologist may search the property for outcrop which, even if present, is not likely to be very informative as to the possible location of base metal deposits. He then recommends geophysical coverage of the property.

After the geophysical survey or surveys, if drilling targets have developed, the geologist arranges the drilling contract. He then locates the holes on the ground and examines the core resulting from the drilling. Any worthwhile sections of the core may be sent for assay. If the initial hole or holes are of interest, so that further drilling appears warranted, the geologist will lay out the additional program, usually in consultation with the geophysicist who interpreted the geophysical work on the property.

The Role of the Geophysicist In the Timmins Area

The geophysicist assumes a dominant role in the initial exploration of a property in the Timmins area because of the extensive overburden cover. Once a

property has been selected he executes electromagnetic, magnetometer and gravity surveys (not always all three) on the property on a systematic basis, on lines cut 200′ to 400′ apart across the probable geological strike. The type of electromagnetic survey employed will be selected on the basis of the probable depth of overburden. Because the overburden in this area reaches extremes of over 300′ thickness the Turam method is best employed—although many ineffective surveys have been carried out to date by ill-advised organizations, using electromagnetic methods with too limited depth penetration.

The geophysicist then interprets the results of his surveys and selects drilling targets, with the limitations as indicated above on the certainty of his findings. He will recommend the best site or sites for exploratory drill holes to investigate the source of his geophysical indications.

Usually one, or at most two, drill holes will suffice to eliminate a conducting zone from further interest. The zone which indicates interesting amounts (10% of ore grade or better) of base metals or precious metals across mining widths is rare indeed.

General Exploration Sequence

Before the acquisition of a property a geologist may study the available geological information and the G.S.C. aeromagnetic maps to try to extrapolate the favourable contact and, if possible, select properties close to its projection. An airborne electromagnetic survey would be of considerable value in narrowing down the selection to a relatively few properties. These surveys are flown on a contract basis by one or other service organizations. One could afford to pay a much higher price for a property known to contain a conducting zone in a favourable geological environment than for one which had no such attributes.

After a property has been acquired it will be subjected to geological and geophysical examination, particularly the latter in the Timmins area. With airborne electromagnetic guidance the extent of the ground geophysical coverage may be quite restricted, to an area of a few claims, for example. Electromagnetic, magnetic and gravity surveys, as indicated above, would be employed. The results would be interpreted to arrive at drilling targets, within the limitations mentioned, and these would be drilled.

Geophysical Conclusions

The limitations of the interpretation of the geophysical results have been dealt with at length above, under section 1. At the least, one can conclude that a definite geologic conductor exists. At best one can conclude that this conducting zone is associated with concentrated sulphide mineralization and even deduce something about the probable amount of such mineralization. Under no circumstances, however, using only this geophysical information, can the geophysicist conclude that he has found a base metal ore body—or even a probable (i.e. over 50% probability) ore body.

The professional opinion given by the geophysicist on the basis of his examination of the geophysical data must be limited to the range of those above.

Geophysical Data

If a geophysicist is called upon, as a consultant, to examine the results of a geophysical survey not directed or executed by him, he should have access to all the geophysical data, including the original field notes, as well as all reduced data and plans prepared therefrom. He should, for maximum effectiveness, be given any auxiliary information available from the area, including geological plans and drill logs, etc.

Objective of Geophysical Surveys

In an overburden covered area the burden of determining the existence of targets warranting investigation is left to the geophysicist. If his reply is in the affirmative then these targets have to be sampled to determine their economic merit. This sampling stage may entail trenching or bulldozing (if the overburden is less than about 6′ thick) or drilling if it is thicker. The cost of drilling a single hole in a remote area, far from roads, may be quite considerable, so that drilling should not be recommended without due consideration. In this sense, therefore, a primary object of geophysical work is to determine whether drilling is warranted and where.

The Professional Report

The professional report, whether it be geological or geophysical, should contain clear reference to the pertinent data on which it is based, and on the circumstances, conditions and by whom the data was obtained.

An investor studying the report will be limited in what he derives therefrom by the depth of his knowledge of exploration and mining. It may be assumed that he is not an expert and has no access to an expert opinion. In this event the facts on which the report is based will mean little to him and he will be reduced to considering the opinions of the writer of the report, as expressed in his conclusions and recommendations. These conclusions and recommendations are no better than the technical proficiency and professional ethics of the engineer who writes the report. Probably the most important single item for an investor to note, therefore, is the name of the author of the report. If he is at all serious, the investor can then get an expression of opinion of others on the qualifications and reputation of the author.

If the report is intended for general circulation, regardless of whether or not it is to be submitted to satisfy the requirements of the Securities Commission or the Stock Exchange, it would be useful, from the investor's point of view, to have the normal certificate appended, giving the author's educational background, years of experience, and personal interest in the property or company's securities, if any. This will provide some basis for the investor to assess the author and his objectiveness.

Responsibility of Professional Consultant

The consultant is retained by the company and is paid by the company. His responsibility is, therefore, to the company as an entity, i.e. to its shareholders. The directors and officers of the company act also on behalf of the shareholders. His

report, therefore, should be a sincere expression of opinion designed to adequately inform the shareholders as to the merits of the situation covered by that report. As such, the report should be equally valuable to the officers and directors of the company as well as to the public who may be invited to purchase shares in the company.

Misuse of Professional Consultant's Report

If the report of the consultant is being misused by being quoted out of context, for example, or in any other way, the best action the consultant can take is to make a public disclaimer of responsibility for such misuse. I do not believe that he need voluntarily issue a statement which corrects the erroneous or misleading statement attributed to him, although a correcting statement will likely be requested by one or other party (e.g. the Securities Commission) after such a disclaimer.

STAKING REQUIREMENTS UNDER THE MINING ACT

J. F. McFARLAND*

Number of Claims Which May Be Staked

Mining claims on Crown land and mining rights which are Crown property may be staked by the holder of a miner's licence, which may be obtained by anyone over the age of eighteen years on payment of $5.00 and written application in the prescribed form. Each licensee may stake ninety mining claims in a licence year (April 1st to March 31st) but not more than eighteen of such claims may be staked in any one mining division, the Province being divided into fourteen mining divisions. An application to record the staking must be filed within thirty-one days of staking in the office of the mining recorder for the division in which the claim is situated.

Size of Claim

A mining claim is required to consist of a square of forty acres or thereabouts, unless situated in a subdivided township, when it must conform to an aliquot part of a lot of the subdivision and contain from 37½ to 50 acres depending on whether the township is subdivided into lots of 150 acres, 320 acres, 200 acres or 100 acres.

Method of Staking

A claim is staked by planting or erecting a post at each of the four corners of the claim, beginning with and marking that at the northeast corner No. 1, that at the southeast corner No. 2, that at the southwest corner No. 3, and that at the northwest corner No. 4, so that the number is on the side of the post next following it in the order named, and by writing or otherwise inscribing on the No. 1 Post, the licensee's name, the letter and number of his licence, the date and hour of the commencement of the staking, and if the claim is situated in a township subdivided into lots, quarter sections or subdivision of a section, the part thereof comprised in the claim; mentioning the lot and concession or the section by number. The licensee must also write or otherwise inscribe his name and licence number on the No. 2, No. 3 and No. 4 Posts. When there are standing trees the same shall be blazed on two sides along the perimeter of the claim, and the underbrush cut, or where there are no standing trees the boundaries of the claim shall be clearly indicated by planting durable pickets not less than 5 feet in height at intervals of not more than 132 feet, or by erecting at such intervals monuments of earth or rock not less than two feet in diameter at the base and at least two feet in height so that the lines may be distinctly seen.

Claim posts are required to stand not less than four feet above the ground and be squared or faced on four sides for at least one foot from the top; each side shall be at least four inches across where faced or squared, but a standing tree or stump may be used if cut off and squared to such height and size. Each post is required

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to be a new post—that is a post not previously used as a post for a mining claim. In a group of four or more contiguously located claims staked by the same licensee, common posts may be used, provided the common corner is not on the perimeter of the group of claims. Metal tags bearing the claim number, which are furnished by the Mining Recorder, must be affixed to the corner posts of the claim within six months of recording or if it is so desired, such tags may be purchased from the Mining Recorder before staking, in which event they must be attached to the corner posts at the time of staking.

Rights of a Licensee

The staking out, or the recording of a mining claim, does not confer any right, title or interest in or to the mining claims, other than the right to proceed as in The Mining Act provided to obtain a certificate of record and a lease from the Crown, and prior to the issue of a certificate of record, the licensee is merely a licensee of the Crown, and after issue of the certificate and until lease is obtained, he is a tenant at will of the Crown in respect of the mining claim.

Working Conditions

Within five years immediately following the recording of a mining claim, work shall be performed thereon, consisting of stripping or opening up mines, sinking shafts or other actual mining operations to the extent of 200 days' work, which shall be performed as follows:

1. At least 20 days within one year immediately following the recording of the claim.
2. At least 40 days during each of the second, third and fourth years after the date of recording.
3. At least 60 days not later than 5 years after the date of recording

Forfeiture

All the interest of the holder of a mining claim before lease has issued ceases without any declaration entry or act on the part of the Crown, or by any officer, and the claim is open for prospecting and staking out.

1. if the licence of the holder has expired and has not been renewed.
2. if, without the consent in writing of the recorder or the Commissioner, or for any purpose of fraud or deception or other improper purpose, the holder removes or causes or procures to be removed, any stake or post forming part of the staking out of such mining claim, or for any such purpose changes or effaces or causes to be changed or effaced any writing or marking upon any such stake or post.
3. if the prescribed work is not performed.
4. if the work is not reported within the prescribed time.
5. if application and payment for lease are not made within the prescribed time.

Forfeiture also occurs if a mining claim inspector makes a written report indicating that the metal tags have not been affixed to the claim posts within the prescribed time.

Non-compliance with any requirements as to the time or manner of the staking out and recording of a mining claim or with a direction of the mining recorder in regard thereto within the time limited therefor, is deemed to be an abandonment of

the claim and it is immediately open to prospecting or staking out without any declaration or act on the part of the Crown.

History of Windfall Staking

The mining rights on the S½ of lot 9, in the first concession of Prosser township, were forfeited for non-payment of acreage tax under The Mining Act on January 1, 1954, and were declared open for staking on June 1, 1954. On February 24, 1964, Jean Chouniard staked Mining Claims P-56596, 56597, 56598 and 56599, covering the mining rights on the above parcel, and the claims were recorded in his name on March 13, 1964. Transfers of the claims from Chouniard to Texas Gulf Sulphur Company were filed in the office of the Mining Recorder at Timmins on March 25, 1964.

Donald McKinnon, who had considerable experience staking in the Timmins area, while working in the vicinity of Lot 9, Concession 1, Prosser Township, on April 11th, observed that there were no claim posts on the South half of the Lot. On April 12th, in company with Alfred Rousseau and John Larche, he returned to the property; Alfred Rousseau thereupon staked four claims on the South half of the Lot, and presented applications for recording to the Mining Recorder.

Rousseau represented to the Mining Recorder that there was no evidence of the staking of Mining Claims P-56596-7-8-9, and the Mining Recorder ordered an inspection by the Mining Claim Inspector, under the authority of subsection 1 of Section 95 of The Mining Act. The inspection was carried out on April 13, 1964, and Mining Claim Inspector Paul Hermiston reported in writing that he had inspected the claims and found that they were located in the N½ of lot 9, Con. 1, Prosser township. Under date of April 17, 1964, the Mining Recorder notified K. H. Darke, Texas Gulf Sulphur Company, Bon Air Motel, Timmins, by registered mail, that an inspection indicated the claims were located on the N½ of lot 9, Concession 1, and as the same was privately owned land, he had cancelled the claims under Section 96 (2) of The Mining Act. On April 20, 1964, the Mining Recorder recorded the Rousseau applications as Mining Claims P-60352-3-4-5. On May 7, 1964, there was registered in the Mining Recorder's office a memorandum of agreement dated April 22, 1964, between Alfred Rousseau and John Larche, as vendors and Viola R. MacMillan as purchaser, referring to an agreement made between the said parties dated April 18, 1964, wherein Rousseau and Larche agreed to sell to Viola R. MacMillan to be optioned to Windfall Oils and Mines Limited, Mining Claims P-60352 to 60355, inclusive, and including as well Mining Claims P-57685 to 57688, inclusive, in the S½ of lot 7, Con. 6, Wark township, and P-58156 to 58159, inclusive, in the N½ of lot 8, Con. 1, Prosser township. On May 25, 1964, Viola R. MacMillan filed a withdrawal of the memorandum of agreement dated April 22, 1964, and the claims were transferred to Windfall Oils and Mines Limited.

On January 11, 1965, the Mining Recorder issued a Certificate of Record in respect of Mining Claims P-60352-3-4-5 and on January 18, 1965, some 300 days' work consisting of diamond drilling was filed on each claim. A Certificate of Performance of work was issued on January 19, 1965. All of the claims are therefore in good standing until six years from the date of recording, when application for lease must be filed and the first year's rental of $1.00 an acre paid.

STAFF STUDY

SUMMARY OF THE NORMAL PROCEDURES FOLLOWED BY A MINING COMPANY WHEN FINANCING THROUGH SALE OF TREASURY SHARES

Listed Companies

The Toronto Stock Exchange lists all of the authorized shares in a mining company. Conversely, only the issued shares of an industrial company are listed. When a listed industrial company seeks to issue further shares through financing, it does so, if the public is involved, by filing a prospectus under the Securities Act (Ontario), and when the shares have been distributed, a certificate to this effect is given to the Exchange and an application may then be made to add these distributed shares to the listing. Thus in industrial companies only so-called secondary distribution takes place on the Toronto Stock Exchange. For our purposes "primary distribution" means the sale of shares to the public at large by the company (usually through an agent), by a broker who has previously purchased such shares, either on his own behalf or for clients; or by a shareholder or group of shareholders owning a large enough number of previously issued shares to materially affect control of the company. "Secondary distribution" means any trading in shares after the shares have reached the level of general public purchase.

The Securities Act of Ontario exempts from registration shares of a company which are listed and traded on a "recognized" stock exchange. This has come to mean the Toronto Stock Exchange only. Shares listed and traded on the Canadian Stock Exchange, the Vancouver Stock Exchange, or the Calgary Stock Exchange may only be offered in primary distribution in Ontario if a prospectus is first filed under the Act. Because of the aforesaid exemption from the filing of a prospectus and because all of the shares of a mining company whether issued or unissued are listed on the Toronto Stock Exchange, a unique situation has existed and continues to exist respecting listed companies. Mining companies can, by compliance with the relevant regulations of the Exchange, offer from treasury to the public previously unissued shares without being subjected to the provisions of the Securities Act. This convenience and advantage has doubtless been instrumental in huge numbers of shares of such companies having been traded over the years and has contributed to the investment of huge sums by the public in these issues, which are generally classed as "speculative" or "promotional" or "penny" stocks.

It became patently obvious some years ago that this anomalous situation often permitted unscrupulous promoters or entrepreneurs to avoid or stretch the rules and regulations of the TSE. At that time, even more than now, these were more or less on the honour system, and did not require prior disclosures comparable to those under the Securities Act. Many companies fell into the hands of unscrupulous promoters and the unsuspecting shareholders were hurt by improper employment of company funds or by the issue of treasury shares for little or no real consideration, usually through the means of worthless properties. Often, by the time the

Exchange learned of the crime, the perpetrators had departed the scene leaving merely a corporate shell, the shares of which continued to be listed. In an effort to correct and control this obvious weakness, the Exchange instituted, in 1958, the present "Filing Statement" system of disclosure for certain companies. It reviewed the list of mining and oil companies whose shares were listed and classified them as either "exempt" or "non-exempt". The former are those companies which apparently are regarded as being beyond the reach of market promotion because of solid management, or nature and stage of development, or a high share price on the market, or lack of recent primary distribution, or no recent issues of shares. The latter are those companies which the Exchange regards, by reason of lower market price, or a record of primary distribution, or centralized ownership, or control of shares, or for any other of a variety of reasons, as being subject to possible speculation and heavy share trading from time to time. Companies deemed exempt are not generally required to inform the Exchange of material changes in their affairs. They are, however, required under By-law 62 and the listing agreement itself to obtain permission from the Exchange for the issue of treasury shares, whether for cash or other consideration, and for the granting of management options. They may also be required to file information on other matters. Companies deemed to be "non-exempt" are subject to ruling No. 49 of the Exchange formulated in 1958. Among other things this lays down the procedure for the sale of treasury shares under a financing agreement. It is emphasized here that under Ruling 49, there have been established principles and procedures to be followed as the basis for transactions which will be accepted for filing. Traditionally a company must comply with these and give prior notice of its intended transaction to the Exchange before proceeding with same.

Assuming that the shares of our hypothetical company (being a mining or oil company) are listed on the Toronto Stock Exchange and that this company is not exempt from the application of Ruling No. 49, let us examine the normal procedure which it must follow in order to effect the issue of treasury shares for cash. We will first review the corporate steps and filing of documents and the processing of the same through to acceptance by the Exchange. Thereafter we will consider the principles and standards which are laid down by the Exchange to regulate the actual financing agreements and within which principles and standards acceptable agreements must normally be fitted.

The Toronto Stock Exchange will not now permit any listed company to offer shares from its treasury on its own behalf directly to the public. Thus, a registered security dealer must be the means through which the shares are distributed. The Exchange will not always require that such dealer be a member firm. It will permit a qualified and acceptable member of The Broker-Dealers' Association of Ontario to be the distributor provided that a member firm will assume responsibility for "stabilization of the market" and the operation of an "orderly market". The Exchange imposes these responsibilities upon its own members with respect to issues underwritten by them, and will only permit a non-member registrant to be an underwriter if a member firm will voluntarily assume these same responsibilities on its behalf. In any event, shares traded on the Toronto Stock Exchange may only

be traded between member firms and a non-member underwriter will have to distribute shares purchased by it through member firms and pay a commission to them.

Let us assume that Company X, in the opinion of its directors, requires immediate financing for purposes which they consider to be appropriate. An underwriting and option agreement covering treasury shares may be contemplated and entered into. In the case of almost all of these listed speculative companies, some individual (or group of individuals) or some other company is in a "control" position, either actual or constructive. This control may be exercised and may exist by virtue of beneficial ownership of shares, influence on or appointment of the directors, or too often because of general and sustained apathy on the part of the other shareholders. These controlling interests are not generally disposed to surrender or weaken their control through the issue of additional shares to outside interests, albeit the resultant improved financial position of Company X. In rare instances such financing agreements are made at arms length with responsible third party financiers. It is however, the usual procedure for underwriting and option agreements to be entered into between Company X and a broker acting as the agent of the controlling interests of Company X. There is no legal bar to this and the Exchange, as will be shown below, has attempted to force disclosure of this type of financing in the amending filing statement so that theoretically the investing public will be aware of any association of management or controlling interests with the underwriting group. Again, the underwriting broker often acts as a principal on its own behalf and sells the shares on the market for its own account.

It is therefore not at all unusual for a Company X to enter into a financing agreement with a broker who may be acting partly or wholly on behalf of the President or a director or directors, or a previous or present promoter of Company X or the largest shareholder thereof, or a creditor thereof. As long as there is a disinterested quorum of the directors of Company X at the meeting which approves the financing agreement, and any interested director then discloses his interest, the agreement is legally binding on Company X and any director participating in the financing agreement as a principal is not accountable to the shareholders for profits which he may realize.

Once the decision to undertake the new financing has been made by the directors, the underwriting and option agreement itself is prepared and executed by the broker and by Company X. The terms of the agreement should be fully disclosed in the filing Statement which is given to the Toronto Stock Exchange. There will be disclosed in such filing statement all other relevant information, such as the purposes for which the money is required, details of any property acquisitions, financial information consisting of a balance sheet not older than 90 days prior to the filing, and engineering reports where applicable. The Exchange has a committee comprised of a certain number of its members which sits on Thursday of each week to consider these filing statements. No listed company may proceed with a financing agreement of this type unless and until notice thereof has been given to and accepted for filing by the Exchange. Otherwise the shares of the company may be suspended from trading while an investigation is made into the matter, and

this may result in delisting of the shares of the offending company. A broker acting as an underwriter must not assume a short position in the market in advance of the acceptance of the financing agreement, if the only source of shares available to fill the short position is the financing agreement itself. It is difficult to assume that this rule is strictly observed.

If the filing statement committee agrees that its principles have been complied with, it will cause a letter to be sent to Company X by an official of the Exchange, accepting for filing notice of the agreement. The Company may then proceed with the actual allotment, issue and sale of the shares to the underwriter. These shares are then distributed on the Exchange in primary distribution by the broker. Here arises another curious anomaly. In many cases the underwriter broker is acting as a principal, either to the full extent of the underwritten shares, or as to a portion thereof. Being a broker, he is employed by members of the investing public to transact in securities on their behalf for a commission. In cases where he has acted as a principal and distributes shares to his own clientele, he is, in fact, acting both as a principal and an agent in the same transaction. Or, as is often the case, he may take down shares for one client (on commission) and then sell them as agent for that client, to others of his own clients, charging a commission to the purchasers as their agent. At the same time it is open to him to trade in his own personal accounts for his personal profit.

What then are the present principles applicable to financing agreements for companies whose shares are listed on the Toronto Stock Exchange? These may be summarized as follows:

1. An option without an underwriting shall not be accepted.
2. An underwriting shall all be payable forthwith or if the deal is contingent upon an increase or other alteration in the capitalization, not later than the date of the issue of the Supplementary Letters Patent.
3. (a) The minimum underwriting or sale price shall be 15 cents a share; except on the first underwriting or sale following a capital reorganization involving a change of name and a consolidation of shares when it shall be in the discretion of the Board of Governors.
   (b) A minimum underwriting price of 10 cents a share has been approved in principle in exceptional circumstances. The Filing Statement Committee will consider the circumstances in each particular application and will determine whether an option may be permitted at the same price as the underwritten shares.
4. The minimum amount underwritten shall be as follows:
   (a) In ordinary cases $30,000.
   (b) When a company increases its issued capitalization, including the proposed underwriting and option, above $5,000,000 or 5,000,000 shares, the minimum underwriting shall be in the discretion of the Board of Governors.
   (c) In other cases in the discretion of the Board of Governors.
5. When two separate deals are provided within a period of three months, they shall be regarded as if they constituted one deal and the customary provisions for one deal will apply.

6. The initial price of an underwriting shall be at not more than the following discount from the market:

At $ .15 and up to $ .50	25%
At $ .51 and up to $1.00	20%
At $1.01 and up to $2.00	18%
At $2.01 and up to $5.00	15%
Above $5.00	10%

7. Not more than 1,000,000 shares shall be included in an agreement and not more than 200,000 shares shall be specified at any one price, except that an option on 200,000 shares may be permitted at the same price as the underwritten shares. In no case shall the number of shares of an option at the underwriting price exceed the number of shares underwritten.

8. There shall be at least a 5 cent spread provided between each price range up to 50 cents, at least a 10 cent spread from there to $1.00 and at least 25 cents thereafter.

9. Option instalments shall be at intervals of not more than 3 months and not extended in all more than 18 months.

10. Underwriting and option agreements shall contain the following "acceleration clause" or its equivalent:

(i) If the shares of the company sell on any stock exchange or stock exchanges at a price in excess of the limit price hereinafter set forth in respect of the option remaining outstanding bearing the lowest price, the underwriter and optionee will from time to time forthwith exercise such option and purchase optioned shares thereunder to the extent of 50% of all shares of the company sold on all stock exchanges in excess of said limit price.

(ii) If the shares of the company sell on any stock exchange or stock exchanges in excess of the said limit price in respect of more than one outstanding option, the underwriter and optionee will forthwith exercise in full all such options and purchase all optioned shares thereunder up to but not including the shares optioned at the highest option price to which the limit price has become applicable.

(iii) The "limit price" shall be as follows:

200% of the option price when such option price is 50 cents a share or under,

175% of the option price when such option price is above 50 cents a share and under $1.00 a share,

160% of the option price when such option price is not less than $1.00 a share and under $2.00 a share,

150% of the option price when such option price is not less than $2.00 a share and under $3.00 a share,

140% of the option price when such option price is not less than $3.00 a share and under $4.00 a share,

130% of the option price when such option price is not less than $4.00 a share.

11. Underwriting and option agreements shall contain the following clause relating to "sub-options" or "sub-underwritings":

The Underwriter agrees that he will not hereafter enter into any agreement or agreements in the nature of a sub-option agreement, sub-underwriting agreement or assignment with respect to any of the shares herein underwritten or optioned by him without prior notice thereof being given to, and accepted for filing by the Toronto Stock Exchange.

12. A letter (to be known as a letter of committal) setting out a short summary of any underwriting and option agreement relating to shares of a listing company and signed on behalf of the company and the underwriter, will be accepted as sufficient initial notice of such agreement for the purpose of establishing price, but shall be followed within a maximum period of seven days, by the usual completed filing statement.

13. A filing statement may be accepted for filing by the permanent staff of the Exchange, providing the terms of the material change notice fall within the terms of policy laid down by the Filing Statement Committee and the Board of Governors. If the filing statement is not accepted for filing, the applicant company may appeal the decision to the Filing Statement Committee.

14. The permanent staff of the Exchange is empowered to decide what is "material" with respect to a material change or a material fact and is empowered to decide whether or not a filing statement, a short form amending filing statement or a letter notice is required.

15. In no event shall an underwriting and option agreement be proceeded with by a listed company until notice of the said transaction has been accepted for filing by the Exchange.

The foregoing may be and are in fact from time to time amended by the Board of Governors of the Exchange in order to cope with particular circumstances which may exist. In addition, these standards may be waived or varied if the Exchange feels that the best interests of the shareholders as a class will be served. This system has been in effect for seven years and has tightened up the financing of listed mining companies and has served as somewhat of a substitute for a prospectus which would be required in the case of unlisted companies.

Before passing on to a consideration of financing by unlisted companies, it should be pointed out that there is another means available to listed mining companies whereby they can offer treasury shares for cash. This is the offering of rights to those who are shareholders at a certain date of record, affording them the opportunity to buy additional shares directly from the company at a certain price for a certain length of time. Again as this involves a material change, a non-exempt company must give prior notice of its intention to make such an offering by disclosing all aspects of same to the Exchange in a Filing Statement. Here the company generally has need of financing to a certain minimum amount and often a broker (acting for itself alone or acting for controlling interests or management) will agree to purchase, at the termination of the offering, all shares which have not been bought by the other shareholders. There is no way to estimate what response such an offering will elicit from the shareholders and it would be unwise for a company with certain budget requirements to make the offering unless it had a "back-up" underwriter committed to the purchase of the desired minimum of shares. These offerings are usually permitted to be made at a price which can be considerably below the minimum underwriting prices set out above. The reason for this is that there is no preferential and exclusive share purchase by the controlling interests or any one group of shareholders as opposed to the shareholders at large, but all of the shareholders have the right of purchase at the same price, pro rata to their holdings.

Unless the shares of the company are registered under the Securities Act of 1933 of the United States (and few of the listed mining companies in the non-exempt category are so registered) this rights offering cannot legally be made by the company to U.S. residents. Usually, American shareholders are told that they cannot avail themselves of their purchase rights, but that they may sell their rights and they are given the warrant and explanatory material for this purpose. The rights themselves are listed for trading on the Exchange and trading in the rights continues until a few days before the termination of the offering. In addition to the lower purchase price generally available for a rights offering, such offering has the effect of making available to an underwriter larger blocks of shares at the one price than would be available in the case of an underwriting and option agreement. In other words, assume that the shares of Company X are trading at 50¢. An offering of rights, on the basis of one share for each share already owned, might be made to registered shareholders at a price of 30¢ and an underwriter might agree to buy all shares not taken up by the shareholders. In this case, if the issued capital of Company X at the start of the offering was 1,500,000 shares and if all of the rights were not subscribed for, the back-up underwriter might be able to buy a block of shares well in excess of 200,000 shares at the price of 30¢ when the market in fact is 50¢. If he were doing an underwriting agreement, he would have to pay about 40¢ per share, and would be subject to the restrictions on the numbers of shares at any one price (200,000) and the scaled-up prices as previously described. However, rights offerings are believed to be desirable because they do give the shareholders an opportunity to participate in the initial purchase of additional shares without having to go into the market at what might be an inflated price brought about by promotional influence and speculator activities.

There are many other aspects of the financing of listed mining companies which might be discussed but present space will not permit. For example, investment by non-exempt companies in the shares of other companies of such class (especially under common control) is permitted by the Exchange only where there are good and valid reasons for such investment. Company X could not lightly undertake the underwriting of shares of another speculative mining company unless it can show that it has ample treasury funds available and otherwise uncommitted. If there is any connection between the controlling interests of Company X and the company to be underwritten, such connection will be fully surveyed and explored by the Exchange and must be fully disclosed in the filing material of both Company X and the other company. This whole matter of investment of funds has been under review by the Exchange and its regulations concerning same have been revised recently.

Further, these speculative mining companies are all subject, at least once in their careers, to a reorganization of share capital. Traditionally this takes the form of a so-called "reverse-split" of issued shares which, in reality, is a cancellation of a large proportion of the issued stock. Company X may have 5,000,000 shares authorized and all issued and the shares may be trading on the Exchange at 10¢. Its directors will propose to its shareholders an application for supplementary letters patent to change its name to Consolidated Company X and to cancel, pro rata, 4,000,000 of the shares in the hands of its shareholders. Then an additional

4,000,000 shares (which will rank equally with the issued 1,000,000) are created in order that the company may have a residue of stock to sell to underwriters to raise future working capital. An underwriter is usually available to buy some of these "new" shares and will take options on additional shares. In such cases it is customary for the new shares to trade on the Exchange at a market price close to the reverse multiple of the stock split, in our case at 50¢ per share. Unless this market is adequately supported, however, the market price usually declines and within a matter of a few months, the shares of the Consolidated Company X are again trading about 10¢ per share. In the case of an underwriting of a re-organized company, the Exchange will never permit a base price of less than 25¢ and usually requires a price more in keeping with the foregoing example, that is, closer to 50¢ per share. The shares of the Consolidated Company X are listed for trading and posted in substitution for the old shares which are removed from the board.

Unlisted Companies

We now turn to consideration of a typical financing agreement made by a mining company whose shares are not listed on the Toronto Stock Exchange. As above stated, in such a case if the shares are to be offered in primary distribution in Ontario, the Company must file a prospectus under the Securities Act. The broker handling the distribution of the shares is required to deliver a copy of the prospectus to the purchaser of the shares at the time of confirmation of the sale. There is no similar requirement respecting filing statements in the case of listed companies. These statements are, however, distributed to all member firms of the Toronto Stock Exchange and free of charge to anyone placing himself on the Exchange mailing list.

In unlisted situations in Ontario, underwriting agreements are often made by brokers who are not members of the Toronto Stock Exchange but are members of The Broker-Dealers' Association. There is nothing to prevent a member firm from so acting but as the financing agreements are generally smaller in size and value, it may be said that the non-member firms will do the majority of such underwritings. In unlisted cases there are principles which have been established by the Ontario Securities Commission as guide rules and these must be observed and reflected in the prospectus if the issue is to be registered. Again, these are not statute law or regulations made under statutes but are merely standards established as the result of practice and are known to the practioners in the field.

A company without a listing may offer its shares from treasury directly to the public if it obtains a license as a Security Issuer. It applies for registration in a manner similar to a broker applying for registration and designates one of its officers as the person responsible for trading in the issue. Such registrations are decidedly scarce and have been so for many years. It was the opinion of the Commission that often persons unable to obtain brokerage registration were associating themselves with companies which were being registered as Security Issuers. Such persons were, in other words, doing through the back door, business which they could not do through the front door and the Commission has been reluctant to accept such registrations for this reason.

More typical is the usual underwriting and option agreement made by a broker or a broker-dealer on its own behalf or on behalf of a client. Again the client may be and usually is a person or private company connected with the issue whether as a promoter, an officer, a director, the holder of a large number of shares, or the vendor of a property. Full disclosure of any such insider relation must be made in the prospectus. The minimum underwriting permitted by the Commission is $5,000.00. The minimum underwriting price is 10¢ per share. The underwriting and option agreement may cover up to 1,000,000 shares and may extend no longer than two years. A maximum of 200,000 shares may be underwritten at any one price and there can usually be an additional 200,000 shares optioned at that same price. There are to be rises of at least 2½¢ per share with respect to the separate blocks of shares, i.e. an underwriting on 200,000 shares at 10¢ might be coupled with an option on 200,000 shares at 10¢ and subsequent options in like numbers of shares at the respective prices of 12½¢, 15¢, and 17½¢ per share. The underwriting is payable as to at least 50% forthwith and the balance within 60 days of the date of acceptance for filing of the prospectus. This should be contrasted with the Toronto Stock Exchange rulings which require immediate payment for all of the underwriting. The rise of 2½% per share pertains to the 10¢ to 20¢ range, and thereafter up to a price of 50¢ per share there must be a 5¢ per share rise. Thereafter to 80¢ per share there must be a 10¢ rise and above 80¢ there must be a 25¢ per share rise. The first option can run for six months but subsequent option intervals are three months.

It is pointed out here that the Securities Commission does not have any hard and fast rules whereby the initial underwriting price is related to the current market price and a discount from the latter is permitted. This is because the majority of these unlisted issues are brought out as new issues without any existing market or because there is not a so-called "free" market for the shares but instead there exists a "promoter's" market. Briefly the latter may be described as a one-way market where the underwriting broker offers to sell shares from his account but does not always stand ready to buy back shares which may be offered by previous purchasers. Thus there cannot exist a free market as is the case in a listed security because of the supervision of the Exchange and the wider trading in the shares.

Again, in unlisted issues, it is possible for the underwriting broker to buy shares at 10¢ each from treasury and to offer them to the public at prices up to 30¢ per share. This is the so-called "price spread" which is fixed by The Broker-Dealers' Association upon application by the broker involved. These price-spreads vary as the option price exercisable by the broker rises, so that shares under option at 15¢ may be offered up to a price of 45¢ and so on, but not necessarily in the ratio of 3 to 1. In fact, the maximum offering price becomes more like twice the option price as the shares are taken down at higher option prices. After the last option has been exercised, there is no further ceiling price imposed by the Broker-Dealers' Association. The theory behind this practice is a recognition of the expenses and costs of the underwriting broker with respect to the issue. Thus shares taken down by him from the company can be offered to the public at up to three times their price to the underwriter.

In addition to the normal underwriting situation, an unlisted company, as distinct from a listed company, can employ a broker as its agent to offer treasury shares to the public on its behalf on a commission basis, never to net the company less than 10¢ per share. Here the commission payable to such broker can be as high as 25% of the proceeds realized on the sales, and in addition the company can contribute a further sum towards the broker's selling expenses related to the issue. In practice the Securities Commission will limit the contribution to an additional 15% of the proceeds. No such method of distribution is available to listed companies.

Another distinction between listed and unlisted companies is that in the former case options must be exercised when due, except that the Exchange will generally permit one extension of not more than three months on an option if there is mutual agreement between the broker and the company, and if the exercise price of the option is above the current market price for the shares of the company. After such extension, no further extension can be had and if not met, the option terminates as does the whole agreement. In unlisted companies the Securities Commission will accept amendments to the prospectus time and again to extend options provided that the final exercise date can never be longer than two years from the initial agreement date. It is possible to have as many as three or four three month extensions to the one option agreement provided that the prospectus is kept up to date and the company is not disqualified from primary distribution for any other reason.

We will not attempt here to discuss fully the various plans of sale which must be disclosed in a prospectus of an unlisted issue which is being underwritten. Distinction is made between a registrant underwriting on its own behalf (no plan of sale needed) or a registrant underwriting for a non-registrant (sales plan must be outlined). The prospectus must set out the proposed method of distribution and usually reserves the right to sell to other brokers, as principals or agents, at a mark-up not to exceed one cent per share. No unregistered person or company can now be an underwriter. Formerly any individual or any private company with the necessary means could be an underwriter of an unlisted issue but could only sell his shares to the public through registered dealers. Because of failure on the part of certain underwriters to meet their commitments, and in order to tighten up control over underwritings, the Commission ruled some time ago that only registrants could be underwriters.

In addition to registered brokers and broker-dealers, there is a special type of registration available to individuals or firms which permits them to be underwriters for their own account. They must apply for registration in the usual way and once registered may take down shares but may not sell them to the public. This type of registration also enables the registrant to underwrite issues listed on the Toronto Stock Exchange but again he must only sell through member firms on a commission basis. This type of registration has been used by certain individuals and private companies in order to avoid paying a registered broker commission for merely exercising on their behalf the initial underwriting commitment. Here the non-member, non-trading broker-dealer (as they are called) may take down the

underwriting direct from treasury and then place the shares for sale with a broker authorized to deal with the public.

Unlisted mining and oil companies may also offer additional shares to shareholders of record at a certain date, under a rights offering. There is seldom any prohibition against American shareholders exercising their rights even though the issue is not registered with the Securities Exchange Commission and the exercise is a breach of the laws of the United States. This is contrasted with the practice of listed companies who are required by the Toronto Stock Exchange to exclude American shareholders from the offering unless the issuer company has SEC registration. This type of offering by an unlisted company could formerly be done, and often was done, without the filing of a prospectus by the issuer company under an exemption from registration contained in the Securities Act. This exemption was really designed for companies who had previously undergone primary distribution of shares but had not maintained registration, and who were in need of immediate minimum financing to maintain a certain property or their very existence. Unfortunately the exemption was sometimes used as a means of a general offering to a large number of shareholders without the necessity of filing a prospectus. The exemption provisions have been tightened up and a company desiring to avail itself may be asked by the Commission to file information which can be just as full and informative as that required if a prospectus were being filed.

APPENDIX B[1]

PUBLIC QUESTIONNAIRE TO WINDFALL PURCHASERS

A questionnaire itemizing one purchase and one sale was sent out to 727 members of the public who had traded shares of Windfall Oils and Mines Limited during July, 1964.

In selecting these names, two criteria were observed. Traders selected were:

(1) Low volume participants in the market, i.e., persons trading less than 5,000 shares during July, 1964;

(2) Persons who had made at least one purchase and one sale during the period.

In the composition of the sample, nearly every Timmins, Noranda, and American resident who satisfied the above criteria was included. Exhaustive coverage was given to these special groups in order to have enough respondents to make a tabulation. Furthermore, it was felt that people from these areas might have particularly interesting information or opinions to offer. The 500 persons categorized as "Other Canadians" are a random sample, subject to the qualifications set out above.[2]

TABLE 14

The geographical distribution of the questionnaires sent and answers received was as follows:

GEOGRAPHICAL AREA	NUMBER SENT	NUMBER DELIVERED	NUMBER ANSWERED AND RETURNED	RESPONSE RATE %
Timmins	96	93	77	83
Noranda	79	77	56	73
United States	52	50	34	68
Other Canadian	500	471	380	81
Overall Total	727	691	547	79

[1]Appendices B, C, D and E have been published as an adjunct to this report for two reasons. First, the appendix device was found to be a convenient form for illustrating and supporting some of the main points in the text of the report without requiring repetitive explanatory and statistical entries. Second, in developing the background material for the examination of witnesses and for drawing conclusions about brokerage practices, an enormous amount of statistical work on trading has been carried out. Compilation of such material is believed to be unprecedented in securities trading investigations and was only made possible by the use of the Electronic Data Processing techniques employed in collecting Windfall trading data. Because this statistical material may be of general interest both to members of the brokerage community and to other interested participants in the market, it is felt that some of the most interesting items should be presented in published form.

In addition to the explanatory and statistical material published here, there are large files of supportive memoranda and data compilations stored with the testimony and exhibits put before the public hearings. Such documents may be referred to by the serious analyst wishing to make an in-depth study of the data presented here by making application to the Attorney General for Ontario in whose care all material has been placed.

[2]The sample was not sufficiently large nor the methods of selection sufficiently random to allow conclusions based on the application of formal tests of statistical significance. It was however adequate for the purposes of the Commission.

A tabulation of the answers to certain of the questions is set out in the following tables. Where compilations do not appear to correspond to the total of the persons answering, respondents may have marked more than one of the possible answers.

TABLE 15

The Commission is interested in the reasons which led you to purchase Windfall shares. Below is a list of reasons commonly advanced for purchasing shares, together with blank spaces in which you may insert other reasons particularly applicable to your purchase. Please indicate the reason which influenced you in your purchase.

TOTAL RESPONDENTS	547 = 100%
TOTAL REASONS Mentioned:	
a. Because of market action indicating that an important discovery had been made which would result in a rise in price	330– 60
b. Because of the proximity of Windfall's property to recent discoveries	235– 43
c. Because of favourable rumours concerning drilling or assay results	134– 25
d. Because of information and news coverage in radio, TV and daily or weekly newspaper reports	99 18
e. Because of market action indicating that a manipulation was underway which would result in a rise in price	96– 18
f. Because of confidence in the Company and its Board of Directors	65– 12
g. Because of advice or a "hot tip" given by your broker or investment counsel	62– 11
h. Because of advice or a "hot tip" given by a stranger	23– 4
i. To cover a previously established short position	4– 1
j. Various other reasons given	30– 5
No reasons given	19– 3

TABLE 16

The Commission is similarly interested in the reasons which led you to sell Windfall shares. Below is a list of reasons commonly advanced for selling shares, together with blank spaces in which you may insert reasons particularly applicable to your sale. Please indicate the reason which influenced you in your sale.

TOTAL RESPONDENTS	547 = 100%
TOTAL REASONS Mentioned:	
a. To realize a satisfactory profit	238 - 44
b. Because of market action indicating a probable fall in price	141– 26
c. To prevent losses from increasing	139– 25
d. Because of unfavourable rumours concerning drilling or assay results	38 - 7
e. Because of advice or a "hot tip" given by your broker or investment counsel	27– 5
f. Because of advice or a "hot tip" given by a personal friend or business consultant	12– 2
g. To establish a short position	5– 1
h. Because of advice or a "hot tip" given by a stranger	3– 1
i. Various other reasons given	59 11
No reasons given	44– 8

TABLE 17

When you made this purchase of Windfall how did you feel about the investment? Please indicate the phrase which most closely describes your feeling at the time of purchase.

TOTAL RESPONDENTS	547 = 100%
a. Considered it a gamble	321– 56
b. Considered your money safe for a short term with possibility of quick capital gain	202– 36
c. Considered it a long term investment	14 - 2
d. Various other reasons given	18– 3
No reasons given	20– 3

TABLE 18

How likely is it that you will trade in speculative mining securities again?

Likelihood	*Whole Sample*	*Timmins*	*Noranda*	*U.S.*	*Other Canadian*	*Gainers*[1]	*Losers*[2]
Very likely....	33%	35%	54%	27%	30%	36%	29%
Likely.....	36	36	29	15	39	38	34
Sub-Total (*likely* plus *very likely*.....	69%	71%	83%	42%	69%	74%	63%
Not likely.....	22	25	12	53	21	20	26
Undecided.....	9	4	5	5	10	6	11
Number of Respondents...	547 = 100%	77 = 100%	56 = 100%	34 = 100%	380 = 100%	338 = 100%	209 = 100%

[1]GAINERS—Those who made a profit out of all their Windfall transactions.
[2]LOSERS—Those who sustained a loss as a result of all their Windfall transactions.

TABLE 19

About how many times in the past 12 months have you *bought* and/or *sold* shares of speculative mining securities listed on a Stock Exchange?

Number of Purchases/Sales	*Purchases*		*Sales*	
	No. of Respondents	*%*	*No. of Respondents*	*%*
1– 3 times.....	110	20	159	29
4– 6 times.....	92	17	91	17
7–10 times.....	74	14	70	13
11–15 times.....	62	11	43	8
16–20 times.....	31	6	28	5
21–30 times.....	25	5	22	4
31–50 times.....	24	4	27	5
Over 50 times.....	20	4	6	1
Unspecified.....	109	20	101	18
Total Respondents.....	547		547	
Average Number of Purchases/Sales..	12.5		9.7	
Median Number of Purchases/Sales..	7–10 times		4–6	

TABLE 20

FREQUENCY OF PURCHASES OF LISTED SPECULATIVE MINING SECURITIES BY GEOGRAPHIC AREA

Frequency of Purchase	*Percentage of Buyers by Region:* *Timmins*	*Rouyn-Noranda*	*U.S. Buyers*	*Other Canadian*
Total Respondents—100%	77	56	34	21
1– 3 times.....	12%	18%	38%	21%
4– 6 times.....	9	21	18	18
7–10 times.....	17	16	6	13
11–15 times.....	14	7	9	11
16–20 times.....	9	9	3	5
21–30 times.....	4	4	—	5
31–50 times.....	13	2	—	3
Over 50 times.....	2	4	6	4
Unspecified.....	20	19	20	20
Median Number of Purchases...	11–15	7–10	4–6	7–10

TABLE 21

FREQUENCY OF PURCHASES OF LISTED SPECULATIVE MINING SECURITIES BY INCOME GROUPS

Frequency of Purchase	*Under $5000.*	*$5001-$7500.*	*$7501-$10,000.*	*Over $10,000.*	*Refused*[1]
Total Respondents—547 = 100%	116	142	86	137	66
1 - 3 times	20%	20%	21%	23%	12%
4- 6 times	22	12	15	23	8
7–10 times	9	20	13	11	14
11–15 times	10	12	14	13	6
16–20 times	7	7	6	6	
21–30 times	4	6	4	4	5
31–50 times	1	7	6	5	1
Over 50 times	6	1	7	5	
Unspecified	21	15	14	10	54

[1]66 persons did not state in which income group they fell.

TABLE 22

About how much do you estimate that you have made or lost as a result of purchases and/or sales of these LISTED stocks during the past 12 months?

547 RESPONDENTS—MARCH 1964 TO MARCH 1965

Financial Result			
Total Respondents—547 = 100%			
GAIN: Up to $500		69–13%	
$501–$1000		40- 7	
$1000–$2000		28- 5	
Over $2000		29- 5	
Don't know amount		18- 3	
Sub-Total (Gainers)	184		33%
LOSS: Up to $500		89–16%	
$501–$1000		46- 9	
$1000–$2000		40- 7	
Over $2000		53-10	
Don't know amount		9- 2	
Sub-Total (Losers)	237		44%
Unspecified as to gain or loss	126		23%

TABLE 23

FINANCIAL RESULT OF TRADING IN LISTED SPECULATIVE MINING SECURITIES BY AREA

	Timmins	*Rouyn-Noranda*	*U.S. Buyers*	*Other Canadian*
Total Respondents—547 = 100%	77	56	34	380
GAIN: Up to $500	8%	16%	17%	13%
$501–$1000	10	9	3	7
$1000–$2000	1	5	6	6
Over $2000	8	9	9	4
Don't know amount	3	4	6	3
Sub-Total (Gainers)	30	43	41	33
LOSS: Up to $500	9%	18%	15%	18%
$501–$1000	7	9	6	9
$1000–$2000	13	4	9	6
Over $2000	23	12	6	7
Don't know amount	3	4	—	1
Sub-Total (Losers)	55	47	36	41
Unspecified as to gain or loss	15	10	23	26

TABLE 24

FINANCIAL RESULTS OF TRADING IN LISTED SPECULATIVE MINING SECURITIES BY EDUCATION

		Elementary	*High School*	*College*	*Post Graduate*	*Refused*
Total Respondents—547 = 100%		59	252	115	70	51
GAIN:	Up to $500	7%	14%	16%	13%	2%
	$501–$1000	10	6	12	7	—
	$1000–$2000	7	5	7	4	2
	Over $2000	7	4	8	7	2
	Don't know amount	3	4	1	7	—
	Sub-Total (Gainers)	34	33	44	38	6
LOSS:	Up to $500	19%	20%	15%	13%	4%
	$501–$1000	7	11	5	10	2
	$1000–$2000	2	8	10	7	2
	Over $2000	17	11	8	9	2
	Don't know amount	3	2	—	1	2
	Sub-Total (Losers)	48	52	38	40	12
Unspecified as to gain or loss		18	15	18	22	82

TABLE 25

FINANCIAL RESULTS OF TRADING IN LISTED SPECULATIVE MINING SECURITIES BY INCOME

		Under $5000	*$5001-$7500*	*$7501-$10,000*	*Over $10,000*	*Refused*
Total Respondents—547 = 100%		116	142	86	137	66
GAIN:	Up to $500	12%	16%	15%	10%	7%
	$501–$1000	7	6	12	7	5
	$1000–$2000	6	3	8	6	3
	Over $2000	3	1	2	15	3
	Don't know amount	3	5	4	2	3
	Sub-Total (Gainers)	31	31	41	40	21
LOSS:	Up to $500	22%	18%	18%	14%	6%
	$501–$1000	10	9	8	9	3
	$1000–$2000	7	6	8	10	3
	Over $2000	12	12	6	12	2
	Don't know amount	1	3	2	—	3
	Sub-Total (Losers)	52	48	42	45	17
Unspecified as to gain or loss		17	21	17	15	62

TABLE 26

FINANCIAL RESULTS OF TRADING IN LISTED SPECULATIVE MINING SECURITIES BY AGE

		Under 35	*36–50*	*Over 50*	*Refused*
Total Respondents—547 = 100%		128	190	197	32
GAIN:	Up to $500	15%	13%	13%	—%
	$501–$1000	6	8	8	3
	$1000–$2000	7	5	4	3
	Over $2000	3	5	8	—
	Don't know amount	2	4	4	—
	Sub-Total (Gainers)	33	35	37	6
LOSS:	Up to $500	22%	15%	16%	3%
	$501–$1000	10	9	8	—
	$1000–$2000	12	7	6	3
	Over $2000	10	13	8	—
	Don't know amount	2	*	3	—
	Sub-Total (Losers)	56	44	41	6
Unspecified as to gain or loss		11	21	22	8

*Less than 1%

Respondents Understanding and Opinion of "Primary Distribution through a Stock Exchange"

Respondents were asked to state what they understood "primary distribution through the facilities of a stock exchange" to mean. The nature of this question, i.e., that it asks about the knowledge of the respondent, has probably produced somewhat biased results due to co-operative efforts in closely associated groups such as residents of the Timmins and Noranda areas.

In order to qualify as "completely correct," the respondent had to indicate that this practice involved the sale on the floor of a stock exchange of previously unissued shares. A grading of "partially correct" was given where people mentioned fixed price options, and other items relating to the mechanics of primary distribution, as it is presently carried on.

Evaluating a question of this nature is extremely risky. The statistical result was that 12% of the respondents got a full comprehension rating, 29% showed a partial understanding, while 59% were incorrect or did not answer. As one would expect better educated respondents showed a more exact understanding of the practice than less well-trained persons. As the practice is not carried on in the United States it is understandable that 26 out of the 34 Americans surveyed were either incorrect or did not answer.

A follow-up question was asked to ascertain how respondents felt about the *desirability* of primary distribution through the facilities of a stock exchange. Only 16% of the respondents felt it was an undesirable practice, while 43% felt it was desirable, and 41% declined to express an opinion. Separating out the 224 respondents who understood the meaning of primary distribution through a stock exchange, 24% felt it was undesirable, 61% favored the practice and 15% had no

comment. A large number of respondents who answered incorrectly or who did not understand the meaning of the phrase, expressed the opinion that it was a desirable practice. This opinion was usually accompanied by a comment in support of the mining exploration industry and a disclaimer to the effect that until a better method could be found to finance mine exploration, primary distribution through stock exchange was desirable.

Statistical Profile of the Public Windfall Traders

Certain control data was requested regarding Age, Sex, Marital Status, Income and Education in order to get an idea of what the public speculators in the shares of Windfall were like. In addition to giving a breakdown of the 547 respondents under the above headings, Table 27 also gives a breakdown by region of residence. Because the Timmins, Noranda and United States respondent groups in the Windfall survey are exhaustive samples, the group designated "Other Canadian" probably gives the most representative profile of the Canadian public investor in listed speculative mining securities.

TABLE 27

STATISTICAL PROFILE: Purchasers of Windfall by Total Sample and Geographic Breakdown

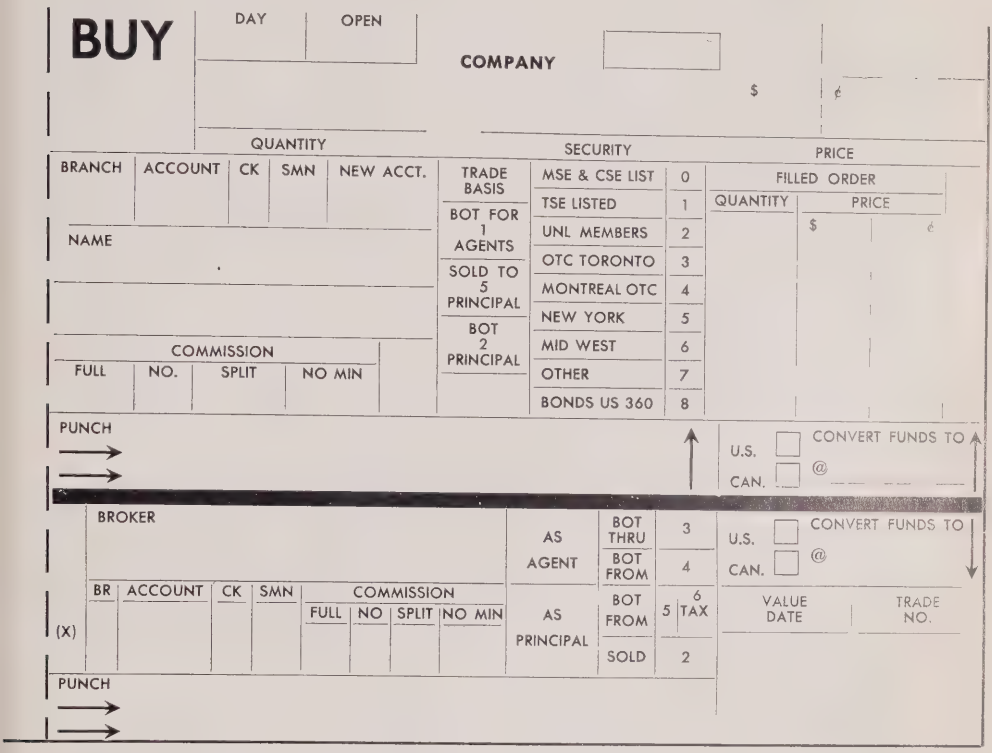
	Total	*Timmins*	*Rouyn-Noranda*	*U.S. Buyers*	*Other Canadian*
TOTAL RESPONDENTS	*547 = 100%*	*77 = 100%*	*56 = 100%*	*34 = 100%*	*380 = 100%*
SEX:					
Male	76%	75%	86%	68%	76%
Female	14	20	7	15	14
Refused	10	5	7	17	10
AGE:					
Under 35	23	26	23	15	24
36–50	35	35	36	50	33
Over 50	36	34	37	29	37
Refused	6	5	4	6	6
MARITAL STATUS:					
Married	72	72	80	73	70
Single	15	17	10	15	15
Widow, Widower/ Divorced	7	10	5	6	8
Refused	6	1	5	6	7
INCOME:					
Under $5000	21	35	16	9	20
$5001–$7500	26	22	36	17	26
$7501–$10,000	16	15	14	21	16
$10,001–$15,000	14	6	12	26	14
Over $15,000	11	6	11	21	12
Refused	12	16	11	6	12
EDUCATION:					
Grades 1–8	11	18	22	—	9
Grades 9–13	46	54	30	35	48
College (1–5 years)	21	17	21	27	21
Post Graduate	13	7	17	29	12
Refused	9	4	10	9	10

APPENDIX C

BACKGROUND MATERIAL

A Brief Explanation of Trading Mechanics and Record-Keeping at the Toronto Stock Exchange

When an order to buy[1] is received at the office of a member firm, the person receiving the order fills out, in duplicate, a buy order form[2] of which the following is a typical example.[3]



The order form requires the name or account number of the client, the security, the number of shares, the type of order, as well as other internal data. Both copies of the order form are then given to the wire-room order clerk who time-stamps it and relays the requisite information to the firm's phone clerk on the floor of the Toronto Stock Exchange. The phone clerk gives the information to the appropriate floor trader who proceeds to the post where the security in question is traded and looks for a trader wishing to sell the same stock.

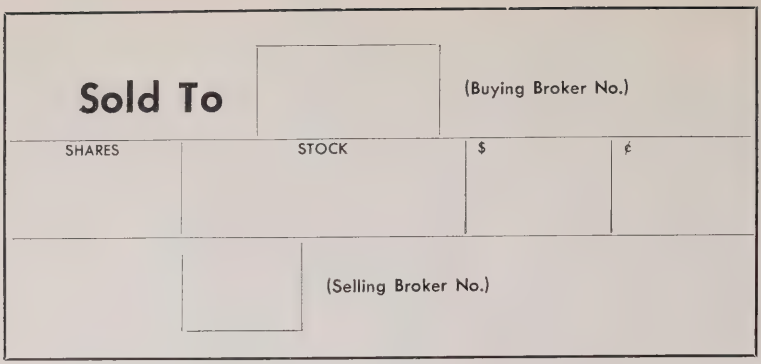
When a transaction is consummated, the selling floor trader fills out in triplicate a standardized *floor ticket* of which the following is an example.

---

[1]Except in the mechanics of recording the trade on the floor, an order to *sell* is handled in exactly the same manner. This mechanical difference is obvious in the ensuing description.

[2]The order form described here is the source for the information required of the brokers in completing the EDP card sent to them by the Commission.

[3]This sample form is of the kind employed by brokers who use the IBM Data Service Centre for book-keeping and mailing out contracts. Other brokers' forms may be quite different in form but the same basic data is required.



The information on a completed floor ticket includes the selling firm's clearing number, the buying firm's clearing number, the symbol of the security, the number of shares traded and the price. The selling floor trader initials the ticket, tears off the top two copies and gives them to the buying trader. The buying trader initials both copies, separates them and gives the top copy to the Stock Exchange post boy. At this point, the trade is completed and there remains only the record-keeping.

There are two streams of record-keeping activity: one for the Exchange and one for the trading brokers. For the Exchange, the post boy time-stamps the floor ticket and drops it into a pneumatic tube which carries it to the basement of the Exchange where the symbol for the security, the number of shares and the price of each trade are punched onto paper tape for reproduction on the ticker tape and for processing by the Exchange computer for statistical purposes. The Exchange's copy of the floor ticket is then sent to the records and Clearing House section of the Exchange where a fully detailed punched-card record* of each trade is created. This file of punched cards is a temporary record of transactions. It is used primarily in assisting in the clearing operations of member firms and in guiding inquiries in trading investigations. The Exchange's permanent record of transactions is the original floor ticket.

After the original floor ticket has been given to the post boy, each floor trader completes his operation by reporting the trade particulars to his firm phone clerk, who in turn informs the firm's wire-room clerk. The wire room clerk writes details of the transaction on the buy order form, time-stamps it on the back, gives one copy of the buy order form to the relevant customers' man and sends the other copy to the firm's accounting department.

At the close of a day's trading most firms try to link up the floor tickets brought back by the floor traders with the office file of orders filled but in many cases it is not possible to do so accurately. At present within the Exchange there is no systematic connection between a particular order placed in a broker's office and an individual trade effected on the Exchange floor. The Exchange records the aggregate number of shares of each security bought and sold by any firm but, for stock clearing purposes, it only requires the firm to make daily adjustments on the net balance.

*The Clearing House punched card described here is the source of the data imprinted on the EDP card which was sent to the brokers by the Commission.

Commissions Payable on Transactions Executed on the Toronto Stock Exchange

TABLE 28

On Shares Selling	*Commission Per Share* ¢	*Commission as a Percentage of Price* *High* %	*Low* %	*Midpoint* %
At $1.00 and under $2.00.....	2½	2.5	1.25	1.7
At $2.00 and under $3.00.....	4½	2.25	1.5	1.8
At $3.00 and under $4.00.....	7	2.33	1.75	2.0
At $4.00 and under $5.00.....	10	2.5	2	2.2
At $5.00 and under $7.50.....	15	3	2	2.4

The *percentage commission* rate equivalent to the *unitary charge* system set out in the Table has been calculated on a high, low and mid-point basis. Evidently, 2% is a fair estimate of the percentage commission charged for Toronto Stock Exchange transaction in securities in the Windfall price range of July 1964.

Commission Splits and Commission Privileges

In general terms, the By-laws of the Toronto Stock Exchange provide that full minimum commission must be charged on all transactions effected on the Toronto Stock Exchange except those executed for:

(a) Members of other "recognized stock exchanges". Members of such exchanges (80 were listed at June 1, 1964) may be charged with a minimum of *two-thirds* of full commission (By-law 31, Sec. 6) except that members of the Vancouver and the Montreal Stock Exchanges including one that is also a member of the Canadian Stock Exchange, and, for transactions in certain securities, members of the Calgary and Winnipeg Stock Exchanges may be charged only *one-half* of full commission (By-law 31, Sec. 5 and Rulings 14, 12 and 33). The split commission privilege does not apply, however, to members who maintain offices in Ontario.

(b) "Authorized non-member brokers" of which there were 133 at June 1, 1964. These brokers are granted split commission privileges whereby they may be charged *two-thirds* of full commission (By-law 31, Sec. 6).

(c) Member firms, member corporations and their partners or directors where the commission charged is a matter of internal policy.[1]

(d) Approved affiliated companies which either own or are owned by a member firm or a member corporation and/or a partner or director of a member firm or member corporation. For parties in this category, the commission charged is a matter of internal policy.[2]

Analysis of the information in the floor trader questionnaire and other general trading studies as well as numerous contacts with persons associated with member firms shows that the internal policy of members with respect to commissions charged to house accounts, affiliated companies and partners and directors varies widely.

[1]In an old tax ruling, it was suggested that one-fifth of minimum commission was a satisfactory compromise which would enable partners and directors to claim capital gains treatment for trading profits. At present, the trading profit of most partners and directors is treated by the tax authorities as *income* and the one-fifth of minimum commission commonly charged against the trading of partners and directors is simply a traditional levy.

[2]See Footnote 1 above.

If a general statement has to be made, one would say that house floor trading accounts are traded with no commission, while partners and directors pay one-fifth or one-quarter of the normal commission rate.

Employees of member firms are treated as regular clients and must pay full commission except that customers' men employed by member firms are allowed to receive their regular remuneration of one-third of the brokerage charges levied against transactions made for their own accounts. This split only applies as long as commissions on such trading do not exceed 15% of their total commission computed on an annual basis (By-law 49, Sec. 8). Although this arrangement ostensibly gives a customers' man a reduced cost of trading, the advantage is not significant when it is recognized that customers' men must pay personal income tax on all commissions earned.

internal account number, identifying the person or company for which any particular trade was executed.

In order to merge data from all three sources, a basically *two-step system* was used: (This description is over-simplified but gives the bare essentials of the technique.)

1. All Brokers and Banks which had any deals in Windfall were asked to submit a report[1] on every account which traded in Windfall shares (information source B). The information on this report included: Name and Address of Account Holder, Name and Address of Party in Interest if different from Account Holder (i.e, the nominator, guarantor or director behind the named Account Holder), *the number of the account,* the number and name of the customers' man normally serving that account, the number of Windfall shares in that account as at June 26, the total number of shares bought and sold in the period, and the number of shares on hand as at July 31. This information was then submitted for key-punching and an E.D.P. tape "Accounts file" was created which included full information as described above on all accounts trading Windfall.

2. The T.S.E. keeps a punched-card record (information source A) of buying broker, selling broker, number of shares, price, date and time for every transaction carried out on the floor; it was a simple matter to have these cards duplicated on a card format[2] custom-made to the Commission's needs.

These transaction cards (52,836 in number: 26,418 for purchases and 26,418 for sales) were delivered to the brokers named as buyer and as seller for specific order data (information source C). The information which the broker was required to add to the card included the *number of the account* for which the transaction was executed, the time the order was confirmed at the brokers' office, whether the order was a declared short sale, market order, stop order, limit order, etc.[3] The information submitted with respect to each T.S.E. transaction was then key-punched and an E.D.P. tape "trade file" was created which included all data pertaining to every trade in Windfall on the T.S.E.

These two tape files, the accounts file and the trade file were then merged and *each trade* linked to an account by virtue of the common account numbers punched into each file. The Commission therefore had available to it information as to the actual party in interest, the intermediate parties, the broker effecting the transaction, the time, date, price and number of shares traded for every purchase and every sale of Windfall which was made on the Toronto Stock Exchange from June 26 to July 31, 1964. Great flexibility was available in the manner in which this information could be used and the Commission was in a position to obtain print-outs in various formats. The two most obvious formats are:

1. Time order of transaction from 10 a.m., June 26 to 3.30 p.m. July 31, thus showing at any given moment what individuals were acting and whether they were buying or selling. ("Report C"—Table 33)
2. All transactions for any one account set out in time order thus showing what any particular account did. ("Report A"—Table 31)

[1]Table 29.
[2]Table 30.
[3]If a transaction was done for another broker or bank, then a further step was necessary to ask the second broker or bank the account number of its clients for each transaction carried out on its behalf.

REPORT ON ACCOUNTS

TABLE 29

1. NAME OF ACCOUNT HOLDER		2. ACCOUNT NUMBER	3. PARTY IN INTEREST		4. NGDH	5. PERSON REGULARLY DEALING WITH CLIENT		6. SHARES OF WINDFALL				7. DATE ACCOUNT OPENED (if after April 1, 1964)	8. NOTES
						NUMBER	NAME	A OPENING BALANCE JUNE 26	B BOUGHT T.S.E. JUNE 26-JULY 31	C SOLD T.S.E. JUNE 26-JULY 31	D CLOSING BALANCE JULY 31		
SURNAME	INITIALS		SURNAME	INITIALS									
STREET ADDRESS			STREET ADDRESS										
CITY PROV.			CITY PROV.										

EDP CARD FORMAT

TABLE 30

B/S	BUY / SELL	T.S.E. SYMBOL	MO. / DAY TRADE DATE	HR. / MIN. TIME	NUMBER OF SHARES	PRICE $ ¢	CONTROL NUMBER

THIS INFORMATION IS FROM TORONTO STOCK EXCHANGE RECORDS.

"B" INDICATES A PURCHASE; "S" INDICATES A SALE.

CONTROL NUMBER: ENTER ON APPROPRIATE ORDER FORM FOR IDENTIFICATION.

A. NUMBER MUST BE IDENTICAL TO NUMBER GIVEN IN FIRST WINDFALL REPORT.

B. ALSO IDENTICAL—SEE "CUSTOMER'S MAN-NUMBER" ENTRY IN FIRST WINDFALL REPORT.

C. MAY BE OMITTED AT PRESENT—SEE EXPLANATORY NOTES (Clause IV).

D. INSERT TIME (i.e. 0|2:0|1) CONFIRMATION RECEIVED FROM FLOOR.

E. 1-ORDER TO BE FILLED AT MARKET. 2-PURCHASE NOT ABOVE OR SALE NOT BELOW SPECIFIED PRICE.
3-MARKET ORDER IF SPECIFIED PRICE REACHED. 4-OTHER—EXPLAIN ON OTHER SIDE OF CARD.

F. (NOT APPLICABLE TO PURCHASES) 1-DECLARED SHORT SALE. 2-OTHER SALES.

G. 1-JITNEY. 2-TRADE FOR NON-MEMBER BROKER.
3-TRADE FOR CHARTERED BANK AS DEFINED. 4-OTHER.

ROYAL COMMISSION ON WINDFALL

IF THIS CARD REPRESENTS MORE THAN ONE ORDER, INDICATE IN THE BOX THE NUMBER OF SUCH ORDERS AND DO NOT COMPLETE REMAINDER OF CARD. REFER TO EXPLANATORY NOTES (Clause V) — 35

A. ACCOUNT NUMBER — 36 37 38 39 40 41 42 43 44 45

B. CUSTOMER'S MAN-NUMBER — 46 47 48

C. FLOOR TRADER NUMBER — 49 50

D. TIME ORDER CONFIRMED — HOUR | MINUTE — 51 52 53 54

E. TYPE OF ORDER: MARKET (1) STOP-ORDER (3) LIMIT (2) OTHER (4) — 55

F. CLASS OF SALE: DECLARED SHORT (1) OTHER (2) FOR PURCHASES LEAVE BLANK — 56

G. CLASS OF TRADE: JITNEY (1) NON-MEMBER (2) BANK (3) OTHER (4) — 57

FOR JITNEY TRADES, SHOW NUMBER OF OTHER

internal account number, identifying the person or company for which any particular trade was executed.

In order to merge data from all three sources, a basically *two-step system* was used: (This description is over-simplified but gives the bare essentials of the technique.)

1. All Brokers and Banks which had any deals in Windfall were asked to submit a report[1] on every account which traded in Windfall shares (information source B). The information on this report included: Name and Address of Account Holder, Name and Address of Party in Interest if different from Account Holder (i.e, the nominator, guarantor or director behind the named Account Holder), *the number of the account,* the number and name of the customers' man normally serving that account, the number of Windfall shares in that account as at June 26, the total number of shares bought and sold in the period, and the number of shares on hand as at July 31. This information was then submitted for key-punching and an E.D.P. tape "Accounts file" was created which included full information as described above on all accounts trading Windfall.

2. The T.S.E. keeps a punched-card record (information source A) of buying broker, selling broker, number of shares, price, date and time for every transaction carried out on the floor; it was a simple matter to have these cards duplicated on a card format[2] custom-made to the Commission's needs.

These transaction cards (52,836 in number: 26,418 for purchases and 26,418 for sales) were delivered to the brokers named as buyer and as seller for specific order data (information source C). The information which the broker was required to add to the card included the *number of the account* for which the transaction was executed, the time the order was confirmed at the brokers' office, whether the order was a declared short sale, market order, stop order, limit order, etc.[3] The information submitted with respect to each T.S.E. transaction was then key-punched and an E.D.P. tape "trade file" was created which included all data pertaining to every trade in Windfall on the T.S.E.

These two tape files, the accounts file and the trade file were then merged and *each trade* linked to an account by virtue of the common account numbers punched into each file. The Commission therefore had available to it information as to the actual party in interest, the intermediate parties, the broker effecting the transaction, the time, date, price and number of shares traded for every purchase and every sale of Windfall which was made on the Toronto Stock Exchange from June 26 to July 31, 1964. Great flexibility was available in the manner in which this information could be used and the Commission was in a position to obtain print-outs in various formats. The two most obvious formats are:

1. Time order of transaction from 10 a.m., June 26 to 3.30 p.m. July 31, thus showing at any given moment what individuals were acting and whether they were buying or selling. ("Report C"—Table 33)
2. All transactions for any one account set out in time order thus showing what any particular account did. ("Report A"—Table 31)

[1]Table 29.
[2]Table 30.
[3]If a transaction was done for another broker or bank, then a further step was necessary to ask the second broker or bank the account number of its clients for each transaction carried out on its behalf.

REPORT A—TABLE 31

ROYAL COMMISSION ON WINDFALL—REPORT A—TRADING BY ACCOUNT JUNE 26 JULY 31, 1964

Code	Name and Address	Type Bkr.	Smn.	Account	Bought	Sold	Price	$ Bought	$ Sold	Order	Date	Time	Bkr.	Ctl.
201	Doe, J. 999-99th Ave., Toronto, Ont.....		028	31-5180-0		1,000	.65		650	LIM	7-03	1.43	55	7
			028	31-5180-0		1,000	1.60		1,600	MKT	7-06	11.19	55	47
			028	31-5180-0		500	1.60		800	MKT	7-06	11.19	55	47
			028	31-5180-0	500		1.85	925		MKT	7-06	1.59	55	125
			028	13-5180-0	600		1.88	1,128		MKT	7-06	3.25	87	159
			028	31-5180-0	200		1.87	374		MKT	7-06	3.25	76	160
			028	31-5180-0	200		1.90	380		MKT	7-06	3.27	41	161
			028	31-5180-0		500	1.95		975	MKT	7-07	10.20	32	170
			028	31-5180-0		1,000	1.95		1,950	MKT	7-07	10.21	53	174
			028	31-5180-0		500	1.53		765	MKT	7-07	3.19	39	280
			028	31-5180-0		500	1.52		760	MKT	7-08	10.07	24	303
			028	31-5180-0		500	1.17		585	MKT	7-08	12.27	55	402
			028	31-5180-0		1,000	1.20		1,200	MKT-SS	7-08	2.13	77	437
			028	31-5180-0		500	1.26		630	MKT-SS	7-09	10.13	79	452
			028	31-5180-0		500	1.53		765	MKT-SS	7-09	12.21	92	509
			028	31-5180-0	5,000		2.40	12,000		MKT	7-09	3.10	41	504
					6,500*	7,500*		$14,807*	$10,680*					

REPORT B—TABLE 32

ROYAL COMMISSION ON WINDFALL—REPORT B—TRADING OF RELATED ACCOUNTS—IN TIME ORDER—JUNE 26-JULY 31, 1964

Code	Name and Address	Type Bkr.	Smn.	Account	Bought	Sold	Price	$ Value	Order	Tdr.	Date	Time	Bkr.	Ctl.
705	Collins, M..... Smith & Green Co. Ltd.	H 25	008	00-0018-9		500	1.21	605	LIM	01	7-08	2.13	32	121
705	Collins, M..... Smith & Green Co. Ltd.	H 25	008	00-0018-9		600	1.21	726	LIM	01	7-08	2.13	99	122
705	Collins, M..... Smith & Green Co. Ltd.	H 25	008	00-0018-9		500	1.21	605	LIM	01	7-08	2.15*	70	123
705	Collins, W.....	102-25	464	05-0881-0	300		1.23	369	MKT	01	7-08	3.00	32	182
705	Collins, W.....	101-55	464	05-0881-0	2,700		1.23	3,321	MKT	01	7-08	3.00	28	183
705	Collins, W.....	102-25	464	05-0881-0	500		1.23	615	MKT	01	7-08	3.00	55	184
705	Collins, W.....	102-25	464	05-0881-0	1,000		1.23	1,230	MKT	01	7-08	3.00	92	185
705	Collins, W.....	102-55	464	05-0881-0	500		1.23	615	MKT	01	7-08	3.00	56	186
					5,000*	1,600*		$1,936 SOLD $6,150 BOT.						

In order to draw all associated accounts together and to allow a machine analysis which would point out possible wash trades and other irregular practices, a further refinement was included by assigning all related accounts and/or individuals a unique *Field Code Number*. In this way, further formats were created so that all transactions pertaining to an individual ("Report B"—Table 32) or to a group ("Report D"—similar to Report B), irrespective of the broker and account number, would be printed in time order and sub-totalled by day.

Some Statistics

To obtain full information on the 56,937 trade items pertaining to Windfall, over 250 brokers and banks[1] were requested to provide data. They reported on over 8,800 accounts. 7,800 of these accounts reporting 51,700 trades (about 91% of all trades) were operated directly by the clients, partners and employees of Members of the Toronto Stock Exchange. The rest of the accounts and trades were handled by banks and Non-Member brokers who traded *through* Members of the Toronto Stock Exchange.

To ensure that trades had been accurately reported to the Commission, an audit programme was carried out. The indicated error rate at the .997 significance level was less than 1%. All errors discovered in an examination of nearly 2,000 trades were clerical in nature, mostly resulting from a transposition or key-punch error in account numbers copied onto the trade cards. The majority of this type of error has been followed up and corrected in the Commission's records.

At this date, fewer than 130 trade items representing 60,000 shares have not been traced to an actual party in interest. About 25% of these were carried out through brokers, banks or trust companies, whose overall volume did not warrant the effort and expense of tracing down their clients. The rest are due to clerical errors, as described above, and could be followed up very readily.

Concluding Comment

Historically the collection of transaction information regarding heavily traded securities has been a laborious and time-consuming job for securities investigators. In the absence of any precedent for a study of this nature, this Commission decided to invest the necessary effort and money to develop permanent Electronic Data Processing programs which would be adaptable to other trading data collections, should the need for them arise.

In any future enquiry into stock market activity, by use of the package of EDP programmes created for this Commission, a study of similar depth and comprehensiveness can be immediately initiated.

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[1] 94 Members of the Toronto Stock Exchange, 5 Chartered Banks, 106 Canadian Non-Toronto Stock Exchange brokers, and 49 American brokers.

REPORT C—TABLE 33

ROYAL COMMISSION ON WINDFALL—REPORT C—ALL TRANSACTIONS IN TIME ORDER—JUNE 26-JULY 31, 1964

Code	Name and Address	Type	Bkr.	Smn.	Account	Bought	Sold	Price	$ Value	Order	Tdr.	Date	Time	Bkr.	Ctl.
5512	Miller, Henry		32	018	29-3346-3	1,000		1.85	1,850	MKT		7-06	2.01	74	100
5512	Miller, Henry		32	018	29-3346-3	1,000		1.85	1,850	MKT		7-06	2.01	50	101
	Bergstone, Mrs. Anna		32	047	57-9648-7	500		1.85	925	MKT		7-06	2.01	55	98
	Gable, Mrs. M. B.		02	036	00-7650-2		300	1.83	549	MKT		7-06	2.01	27	3
1471	J. P. Cannon & Co. Ltd.	H	47	007	00-0001-5		100	1.85	185	MKT	02	70-6	2.01	32	15
	Hammer, W. F.														
1557	Rouge, P. M.	H	55	010	05-8730-3		100	1.85	185	MKT		7-06	2.01	32	111
	T. A. Richardson & Co.														
1557	Rouge, P. M.	H	55	010	05-8730-3		500	1.85	925	MKT		7-06	2.01	32	112
	T. A. Richardson & Co.														
124	McGregor, Dr. V.	D	138-74	001	00-0012-2		1,000	1.85	1,850	LIM		7-06	2.01	32	38
	MacMilton, Mrs. A. B.														
	Turcott, Wood Power		173-50		00-0077-7		1,000	1.85	1,850	LIM-SS	01	7-06	2.01	32	60
5128	Greene, D.		55	053	80-8940-3	500		1.84	920	LIM		7-06	1.09*	92	126
5128	Greene, D.		55	053	80-6940-3	500		1.84	920	LIM		7-06	1.09*	38	127
	Youth, Dr. S.		41		00-0018-7	100		1.85	185	LIM		7-06	2.03	39	48
	Youth, Dr. S.		41		00-0018-7	400		1.85	740	LIM		7-06	2.03	55	49
1386	Garry, T. G.	H	38	003	10-0555-2		500	1.84	920	MKT-SS	02	7-06	2.03	55	38
	Garry, T. G.														
	Cool, E. B.		42	002	00-0001-8		500	1.84	920	LIM-SS	01	7-06	2.03	55	9
651	Rounge, Bertrand B.		39	210	11-2558-3		100	1.85	185			7-06	2.03	41	146
1557	Rouge, P. M.	H	55	010	05-8730-3		400	1.85	740	MKT		7-06	2.03	41	113

APPENDIX D

STAFF STUDY

GENERAL STATISTICAL ANALYSIS OF TRADING IN SHARES OF WINDFALL OILS AND MINES LIMITED

June 26 - July 31, 1964

The use of an Electronic Data Processing system in collating trading data made possible the type of statistical aggregations presented here. These aggregations provide an insight into the end-result of trading in a single security over an extended period of stock market activity. It should be unnecessary to caution the reader about making generalizations based on this analysis of trading in a single security during a period of unusual circumstances and market activity.

The analysis is organized into four main parts. The first part sets out the basic table and describes the major flows of shares and dollars. The second section attempts a further breakdown into sub-groupings which compare the extent of trading by casual and non-casual traders. The third part breaks down the trading of the Brokerage Community into finer definitions based on the role or status of the component traders. The last section sets out a frequency distribution of the trading losses and profits of all individuals who participated in the Windfall market in July 1964.

Part I

Table 34 sets out an aggregated picture of the results of all Windfall trading on the Toronto Stock Exchange between June 26 and July 31, 1964. Traders have been grouped in categories on the basis of the most obvious and uncontroversial of criteria (place of residence, number of shares traded, common friends, etc.). The composition for these groups was based on information received by the Commission through testimony and through account and trading data contained in the EDP print-out series mentioned above.

Although the meanings of the column headings and trader categories are generally self-evident, Table 34 is fully footnoted to describe the less obvious items. In order to make the calculations in the table precise, it has been necessary to make assumptions regarding how much was paid for shares purchased before June 26 and how much could be realized from shares sold after July 31. It has also been necessary to assume that if all trading is cut off at June 26 and July 31, the on-balance technique applied here which simply relates the *aggregated* changes in the share and dollar positions of the various groupings will adequately reflect the actual situation.

TABLE 34—Aggregated Changes in Wealth and Share Ownership as a Result of Trading in Windfall Shares, June 26-July 31, 1964*

(Expressed in Units of a Thousand)

CATEGORY OF TRADER	SHARE VOLUME Bought	%	Sold	%	DOLLAR VOLUME Bought	%	Sold	%	Net Share Position Change[5]	Share[6] Valuation	Estimated Commission Payable[7]	%	Gross On-Balance Proceeds[8] $S — $B	Net On-Balance Proceeds[9] Profit	Loss	Estimated Number of Traders Accounts in Each Category Profit	Loss
a. Brokerage Community—Non-Commission Paying[1]	3,009	22.6	2,970	22.2	$ 7,744	21.1	$ 8,219	22.4	+ 39	$ + 39	$ 0	—	$ + 475	$ 514		86	43
Commission Paying[2]	1,267	9.4	1,140	8.4	3,444	9.4	3,166	8.6	+ 127	+ 127	135	11.4	− 278		$ 286	334	298
b. MacMillans and Controlled Companies	53	.4	962	7.2	69	.2	1,971	5.4	− 909	− 545	52	4.4	+1,902	1,305[10]		21	1
c. MacMillan Directed Accounts	36	.3	104	.8	35	.1	129	.4	− 68	− 41	4	.3	+ 94	49		19	3
d. Vendors of the Property	2	—	130	1.0	3	—	166	.5	− 128	0[11]	3	.3	+ 163	160		5	—
e. Americans Specialty Associated[3]	10	.1	164	1.2	31	.1	487	1.3	− 154	− 92	12	1.0	+ 456	352		50	—
f. Other Americans	285	2.1	262	2.0	961	2.6	861	2.3	+ 23	+ 23	37	3.1	− 100		114	141	108
g. Noranda Residents	640	4.8	550	4.1	1,472	4.0	1,434	3.9	+ 90	+ 90	60	5.1	− 38		8	82	122
h. Timmins Residents	576	4.3	561	4.2	1,628	4.4	1,549	4.1	+ 15	+ 15	64	5.4	− 79		128	146	109
i. Misc. Large Traders[4] (Accounts trading over 5,000 shares)	4,033	30.1	3,576	26.7	11,310	30.8	10,168	27.7	+ 457	+ 457	439	37.0	−1,142		1,124	163	208
j. Misc. Small Traders Accounts trading under 5,000 shares)	3,477	25.9	2,969	22.2	9,993	27.2	8,540	23.2	+ 508	+ 508	381	32.1	−1,453		1,326	1,939	2,817
Totals	13,388	100.0	13,388	100.0	$36,690	99.9	$36,690	99.8	+1,259 −1,259	$ +1,259 $ − 678	$1,187	100.1	$ +3,090 $ −3,090	$2,380	$2,986	2,986	3,709

*To save space all share and dollar figures are in thousands (,000 omitted). Plus (+) and Minus (−) signs are used to indicate whether there has been a net increase (gain) or a net decrease (loss) during the period.

[1]"Brokerage Community—Non-Commission Paying" covers trading for Toronto Stock Exchange member House accounts, partners and directors.

[2]"Brokerage Community—Commission Paying" includes trading by all other persons employed by Toronto Stock Exchange member firms.

[3]"Americans Specialty Associated covers the trading by two United States residents and two American brokerage firms, their clients and principals who had "taken a position" in Windfall previous to the period in question at least partly as a result of contact with the MacMillans.

[4]"Miscellaneous Large Traders" covers the trading of all persons not falling into one of the more particular categories and whose total trading exceeded 5000 shares in the period ("Miscellaneous Small Traders", except for volume of trading, is identical in concept.)

[5]"Net Share Position Change" or Share Volume Bought—Share Volume Sold is the number of shares increase or decrease which each trader category had because of trades in Windfall on the Toronto Stock Exchange between June 26 and July 31, 1964, taking into account all trading by every person within the category.

[6]"Share Valuation" is calculated on the "Net Share Position Change". Where sales exceed purchases, shares are valued at $.60 because this is a good estimate of the average price of purchases made before July 1964; where purchases exceed sales, shares are valued at $1.00 because this is about the price they could have been sold for immediately after July 31. It is important to note that "Share Valuation" does not apply to inventory shares held before and after the trading period; it is only applied to the net change in share position for each group.

[7]"Estimated Commissions Payable" is calculated as 2% (see Table) of gross dollar value of Dollar Volume Bought + Dollar Volume Sold + Share Valuation.

[8]"Gross On-Balance Proceeds" is Dollar Volume Sold − Dollar Volume Bought for all accounts in each trader category.

[9]"Net On-Balance Proceeds" is Share Valuation − Estimated Commissions Payable + Gross On-Balance Proceeds. It is assumed that adding together the net results on the same basis for all accounts in each trader category would give the same result. This figure indicates how each category of trader fared as a group; it does not reflect the individual results.

[10]Refer to Table 5 for a more accurate estimate of MacMillan Controlled Companies' profit from Windfall trading.

[11]Since Vendors (Larche, Rousseau and McKinnon) received 250,000 *free* shares as partial consideration for the properties, a zero valuation was assigned instead of $77,000 (i.e., 128,000 × $.60).

FINANCIAL EFFECTS OF TRADING

Table 34 illustrates two principal economic effects of Windfall trading, the redistribution effect and the leakage effect. As here used, redistribution refers to the transfer of investors' capital as the result of a purchase and sale of securities; leakage refers to the diversion of part of the investors' capital due to the payment of brokerage commission.

The redistribution effect of Windfall trading is shown in the Net On-Balance Proceeds column of the table. Evidently the only groups which were profit-makers were persons in especially advantageous positions, i.e., non-commission paying traders, property vendors, or persons having the benefit of some special contact. The group which were on-balance losers were composed of people without special advantage—the general public.

One might have expected that the amount of money lost by the set of losing groups would be equal to the amount gained by the others. There are three factors which explain why the sum of all losses under Net On-Balance Proceeds differ from the sum of all profits. First, the leakage effect takes place as brokerage commissions are removed from the gross amount the purchaser pays and the gross amount the seller receives. Estimated at 2% of Share Valuation plus Dollar Volume Bought plus Dollar Volume Sold, commissions amount to $1,187,000.[1] Second, the sum of losses minus brokerage commissions paid by losing groups would be equal to the sum of profits plus brokerage commission paid by gaining groups, except that the valuation assigned to the 1,259,000 shares bought by trader categories which were on-balance buyers during the period, and held as at July 31, is $.40 per share higher than the valuation assigned to the like number of shares sold by traders which were on-balance sellers during the period, but who had the stock on hand or under option as at June 26. The amount of this difference in Share Valuation would be $504,000. If the shares held at the end of the period were given the same valuation as those held at the beginning, i.e., $.60, this amount would be the increase in losses.[2] Third, since the Vendors received free shares, no $.60 share valuation has been charged against receipts from sale of their stock. If it was assumed that they paid $.60 per share for their stock, the amount which would be deducted from their profit on sale of 128,000 shares would be $77,000. If adjustments for these last two items are made to the tabulated profits and losses and the

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[1]Including the Share Valuation in the Estimated Commissions Payable overstates the estimate of Commissions actually chargeable to trades consummated in the period by about $40,000.

[2]Adding the whole $504,000 to losses is only an approximation, as $16,000 of it actually applies as a reduction in the profits of the non-commission paying brokerage community.

difference between the adjusted sum of losses and the adjusted sum of profits is taken, the result is:

Sum of Net On-Balance Losses		$2,986,000	
Plus Adjustment for Share Valuation	+	504,000	
Adjusted Losses			$3,490,000
Sum of Net On-Balance Profits		2,380,000	
Minus Adjustment for Vendors' Stock	—	77,000	
Adjusted Profits			$2,303,000
Estimated Brokerage Commissions			$1,187,000

The table also depicts the sources and final repositories of the net amount of redistributed wealth from losing groups to gaining groups in the period of Windfall trading under study. By combining the Commission-Paying and Non-Commission Paying sectors, the Brokerage Community then shows a net on-balance gain from trading of $228,000.

The total financial benefit to the Brokerage Community, before expenses and bad debts, and using a $1.00 terminal Share Valuation, is:

Net On-Balance Proceeds from trading	$ 228,000
Estimated Commissions	1,187,000
Total Benefit	$1,415,000

Of the $1,187,000 set out as commissions, $206,000 was paid by gaining groups, while $981,000 was paid by losing groups.

Other groups who profited from Windfall trading (the vendors, Controlled Companies, etc.) amassed on-balance profits that amount to approximately $1,866,000. Meanwhile, the losing groups, consisting generally of public traders, have had their wealth decreased by $2,700,000[1]

The Share Ownership Effect of Trading

As one would expect, those who profited sold more shares during the period of high prices than they bought. Almost no actual short-selling is attributable to them and virtually all the on-balance sales of the groups showing financial gain are accounted for by persons who held Windfall shares under option, or who bought them before June 26.

By far the greatest portion of on-balance selling (909,000 shares) came from the Controlled Companies; since two of these companies were able to exercise an option on 900,000 shares of Windfall Company stock, their aggregate share position was relatively unchanged as a result of trading in the period in question. The property vendors who had received 250,000 shares of free stock in April were also substantial sellers, actually selling 128,000 shares. The remainder of the on-balance

[1]As explained before, the sum of profits is not equal to the sum of losses because of a different share valuation on stock held at the end of the period and because of free stock held by the vendors. If a $.60 Share Valuation is assumed as a fair price for the end of the period, and the requisite adjustments are made for changes in brokerage community losses and profits, the loss of wealth to the public would be $3,138,000.

selling came from other parties having special contacts. The Controlled Companies and the Vendors, compared to other traders, were in the privileged positions of being able to trade without investment risk. The Controlled Companies had essentially pre-sold 500,000 shares for over $800,000 ($1.01 to $2.00 per share) before they had to pay $490,000 to the Windfall Company for the optioned stock.[1] The Vendors, for their part, had received free stock for the properties and thus were not risking a real financial loss at any time. Of the 1,259,000 shares added to the holdings of losing groups in the period, over 1,000,000 had been sold by persons who were never in danger of sustaining a loss.

The Composition of Grouped Trading Data

On the side of the losers or on-balance purchasers, the Miscellaneous Small Traders account for 408,000 shares, or 14.7% of the total purchased. This group also had the largest on-balance financial loss, $1,326,000. In comparison with that of the Miscellaneous Large Traders, this group's performance indicates inferior trading skill, as they lost 200,000 more dollars on 500,000 fewer shares of trading. Combining all miscellaneous traders, losing accounts outnumber profitable accounts 5 to 4.

The statistics for Timmins and Noranda residents may be somewhat misleading, as the cash losses of a few very large accounts outweigh the results of a larger number of smaller accounts. The on-balance loss in Timmins at $128,000 seems quite large, especially when the majority of accounts were profitable (146 with profits to 109 with losses). But behind this aggregate figure is a $140,000 loss sustained by one person. In Noranda the reverse situation is true; people with losses outnumber those with profits 122 to 82, but still the net on-balance loss was small because several of the early purchasers made substantial profits, e.g., drilling company principals and Noranda Exploration employees who live in that area.

Part II

A further break-down was attempted with respect to whether it might be determined what percentage of the trading in the Other American, Noranda, Timmins, and Over 5,000 Share categories could be ascribed to "semi-professional traders", i.e., persons who earn their livelihood or spend a major portion of their time dealing with securities, trading or some other aspect of speculative mining enterprises. From information received in hearings and from expert advice to the Commission, it was estimated that between 42% and 49% of the volume of trading in these four categories was initiated by semi-professional traders. As Shares Bought is a convenient measure of the extent of activity, Table 35 gives the percentage of market volume attributable to semi-professional traders in each category based on the number of shares which they purchased. These figures are probably minimum figures, as undoubtedly many persons who are in fact within the classification "semi-professional traders" were not known as such to the Commission.

[1]The point should be made that, without the "acceleration clause" to force the take-down of optioned stock, an underwriter-optionee could sell short up to the number of shares under option and, if the mine is unsuccessful, wait for the price of the shares to fall and buy them back in the open market; if the mine is successful and the price of the shares remains high he can exercise the option on treasury stock to make delivery on his sales. Because of the optioned stock, there is no investment risk on the part of the underwriter-optionee after he has recouped his investment in the firm underwriting.

TABLE 35

Amount and Percentage of Buying by Members of Four Public Trader Categories Classed as "Semi-professional" in thousands of shares

Trader Category	Total Volume by Trader Category	Semi-Professional Share Volume	Semi-Professional Buying As a Per Cent of Total Volume in Category %	Number of Persons Classified as Semi-Professional
Other American.....	285	142	50	4
Noranda.....	640	289	45	12
Timmins.....	575	247	43	7
Over 5,000 Shares....	4,033	1,676	42	82
	5,533	2,354	Wtd. avg. 43%	105

A computation of the individual financial results of the trading by persons classified as "semi-professional traders" shows that, if the net proceeds of each of the semi-professional's trading in the Over 5,000 Share category is summed, the 82 traders designated as semi-professional account for $532,000, or 48% of all profits ($1,108,000) realized in the Over 5,000 category, and $859,000 of losses, or 40% of all losses ($2,150,000) suffered in the same category. These figures would seem to indicate that semi-professional traders were more astute than other traders in the Over 5,000 Shares category; however, on a statistical basis, this conclusion is not warranted and the figures are given only to show that relatively few traders are responsible for a large portion of total trading in the category.

Table 36 indicates the relatively small proportion of trading which originates with the casual traders or public investors—less than one-half. Many people are involved, but the aggregate volume is low. The source of 83% of the brokerage commissions was the semi-professional and miscellaneous public.

TABLE 36

	SHARE VOLUME				DOLLAR VOLUME				COMMISSIONS	
	Bought	%	Sold	%	Bought	%	Sold	%	Amount	%
Brokerage Community.	$4,275	32	$4,110	31	$11,188	31	$11,385	31	$135	11
Vendors, MacMillan's Associates, etc.....	101	1	1,360	10	138	—	2,753	8	71	6
Semi-Prof. Public.....	2,354	18	2,135	16	6,668	18	6,038	16	259	22
Other Public	6,658	49	5,783	43	18,696	51	16,514	45	722	61
TOTAL....	$13,388	100%	$13,388	100%	$36,690	100%	$36,690	100%	$1,187	100%

Part III

Table 37 breaks down the trading of component sub-groups with the Brokerage Community. The divisions of Brokerage Community traders are generally self-subscribing. Except for *House Floor Trading* and *Error Accounts,* all categories of traders denoted in the table are comprised of *personal* trading by members of the Brokerage Community.

TABLE 37

Aggregate Trading Statistics: Brokerage Community Traders

BROKERAGE COMMUNITY TRADERS	SHARE VOLUME		DOLLAR VOLUME		NET ON-BALANCE PROCEEDS		ESTIMATED NUMBER OF ACCT'S	
	Bought	Sold	Bought	Sold	Profit	Loss	Profitable	Losing
1. House Floor Trading	$1,647,835	$1,637,872	$ 4,516,300	$ 4,583,936	$ 77,000		27	6
2. Directors and Partners on the Floor	230,000	224,100	536,815	596,869	66,000		14	1
3. Directors and Partners off the Floor	895,500	882,200	2,075,349	2,455,581	394,000		23	8
4. Error Account	235,568	225,354	615,390	582,113		$ 23,000	23	27
5. Floor Traders (not directors or partners)	98,300	89,700	220,989	226,622	6,000		20	7
6. Employees (Trading over 10,000 shares)	502,265	444,143	1,426,673	1,273,033		151,000	14	17
7. Misc. Employees (Trading less than 10,000 shares)	665,701	606,001	1,796,544	1,666,428		140,000	300	274
8. Total Brokerage Community	$4,275,169	$4,109,370	$11,188,060	$11,384,582	$229,000		421	340
Total Non-Commission Paying (lines 1-4)	$3,008,903	$2,969,526	$ 7,743,854	$ 8,218,499	$514,000		87	42
Total Commission Paying (lines 5-7) (Total Comm. = $135,000)	$1,266,266	$1,139,844	$ 3,444,206	$ 3,166,083		$285,000	334	298
9. Total Floor (lines 1, 2, 5)	$1,976,135	$1,951,672	$ 5,274,104	$ 5,407,427	$149,000		61	14

The Brokerage Community has been broken down into three major divisions. They are distinguished by:

—The physical location when trading (on or off the floor of the Exchange);

—the commissions payable (house floor trading accounts usually pay no commission, firm directors and partners pay 1/5 or 1/4 of minimum commission, and have been counted as nil here);[1]

—the size of account (10,000 shares is simply an arbitrary, but convenient, dividing point).

The two aspects of this dissection of trading which appear from this table are the apparent advantage in reduced or nil-commission trading, and the advantage of proximity to the trading floor. As illustrated by the Net-On-Balance Proceeds column, the only groups within the brokerage community who made substantial on-balance profits on their Windfall trading were those who trade on little or no commission, i.e., house floor trading accounts, partners and directors of member firms.

Full commission-paying employees who act as floor traders realized a small profit from trading their personal accounts, but further analysis of the composition of the $6,000 net profit figure is revealing. The sum of all profit in the 20 profitable accounts, i.e., gross profit, is $14,500 ($8,800 of which belongs to one trader) and the sum of the losses is $8,400, leaving a net of $6,100. In the process of this trading, commissions approximating $9,000 were paid by the traders.

The most effective traders were directors and partners of member firms. Only eight such accounts failed to show a profit and the gross amount of the losses in the unprofitable accounts was only about $41,000, while the 23 profitable accounts were ahead $456,000.

Large trading employees and miscellaneous employees were not very successful on-balance. However, two big losers account for $143,000 of the $256,000 of gross losses for the large trading employees.

House accounts' trading, which amounts to over 12% of the total share and dollar volume, shows up as being a small profit operation relative to the number of shares traded and their dollar value. The six losing house accounts had a gross loss of $7,000 and the 27 who profited gained $84,000. As pointed out elsewhere, the common practice of floor traders who operate a house floor trading account and participate in the profits and losses is to be flat at the end of the day. If floor traders seldom hold short or long positions for more than a few minutes and never overnight, they assume very little risk. Consequently, both gains *and* losses are small; for the majority of house floor trading accounts, small profits seem to be the rule. Although the total number of shares traded is large, it is unlikely that at any one time the aggregate position of all house floor trading accounts having long positions exceeded 50,000 shares. The largest position ever held in Windfall by a single floor trader with such an account is about 35,000 shares. The Share and Dollar Volume and Net On-Balance Proceeds for the five most active house floor trading accounts are as follows:

[1] See Table 28.

TABLE 38

FIVE MOST ACTIVE HOUSE FLOOR TRADING ACCOUNTS

June 26 — July 31, 1964

NUMBER OF SHARES		DOLLAR VOLUME IN THOUSANDS		NET ON-BALANCE PROCEEDS
Bought	Sold	Bought	Sold	
416,900	408,000	$1,125	$1,126	$9,399
289,200	288,800	857	866	8,928
215,314	213,600	567	572	6,054
99,800	99,500	283	288	5,868
99,100	98,100	222	233	12,214
1,120,314	1,108,000	$3,054	$3,085	$42,463

PART IV

Table 39 sets out a frequency distribution of the trading profits and losses of all individuals in the public categories, i.e., Other Americans, Noranda residents, Timmins residents, Miscellaneous Large Traders, and Miscellaneous Small Traders. The profit or loss range applicable to each individual was estimated by the same formula as the Net On-Balance Proceeds of Table 34.

TABLE 39

Range of PROFITS: LOSSES Frequency Distribution of "Public" Investors in Five Categories

Categories	Profit (P) Loss (L)	0 $500	$501– $2,000	$2,001– $5,000	$5,001– $10,000	$10,000– $20,000	$20,001– $50,000	Over $50,000	Total By Category
Other Americans	P	72	46	14	5	2	2	–	141
	L	65	22	14	2	3	1	1	108
Noranda Residents	P	38	23	12	3	4	2	–	82
	L	59	43	13	2	4	–	1	122
Timmins Residents	P	68	56	13	6	1	1	1	146
	L	54	28	19	5	–	1	2	109
Miscellaneous Large Traders (Over 5,000 Shares)	P	30	34	42	29	18	8	2	163
	L	16	34	54	40	42	19	3	208
Miscellaneous Small Traders (Under 5,000 Shares)	P	1,222	568	131	12	6	–	–	1,939
	L	1,598	829	319	55	16	–	–	2,817
Totals	P	1,430	727	212	55	31	13	3	2,471
	L	1,792	956	419	104	65	21	7	3,364

This section is concluded with Tables 40 and 41 listing all persons gaining or losing over $50,000 as a result of Windfall trading. These tables give some insight into the magnitude and nature of the trading effected by the individuals who realized the most outstanding profits and losses. Though the identity of the individuals is withheld, each trader is identified by category. Where an individual has trading discretion for other people's accounts, his trading and theirs is all aggregated under his name. The number of shares long or short and the date of the largest positions held are indicated for each trader in the table. Where a person

has traded in and out of more than one significant position, both positions are indicated.

Four of the traders who amassed large profits originally took long positions, but switched to short positions during the four days preceding the collapse of July 31.

TABLE 40

Individuals and Companies with Estimated[1] Trading Profits of $50,000 or More

TRADER CATEGORY	SHARE VOLUME Bought	Sold	LARGEST POSITION HELD ( ) indicates short Shares	Date	ESTIMATED RESULT—PROFIT
MacMillan Cos.	52,741	962,000	n.a.	—	$1,305,000
Amer. Special Account #1	1,000	105,570	n.a.	—	236,000
Amer. Special Account #2	8,500	31,800	n.a.	—	58,000
Amer. Special Account #3	—	26,300	n.a.	—	58,000
Member Firm Partner #1	50,500	60,500	60,500[3]	July 9	114,000
Member Firm Partner #2	155,000	158,300	50,500	July 6	108,000
			(27,000)	July 27	
Member Firm Partner #3	51,800	55,300	15,000	July 6 & 9	61,000
			(8,000)	July 30	
Public (Semi-professional) #1	176,300	214,200	171,300	July 21	201,000
			(23,800)	July 30	
Timmins (Semi-professional) #2	75,800	75,800	52,400	July 13	60,000
Public (Semi-professional) #3	45,000	55,000	37,000	July 16	60,000
			(15,600)	July 30	
Sum of Profits for Persons Gaining $50,000 or more					2,261,000
Sum of Profits for Persons Gaining $50,000 or more (Excluding MacMillan Cos.)					956,000
Sum of Profits for Persons Gaining $50,000 or more (Excluding MacMillan Cos. & Special Account Traders #1 and #3)					604,000

n.a. =not applicable

[1]Based on 2% Commission estimate and share valuations of $.60/share for shares held on June 26 and $1.00/share for shares held after July 31 (as set out in Part I).

[2]10,000 shares held before June 26, 1964.

TABLE 41

Individuals and Companies with Estimated[1] Trading Losses of $50,000 or More

TRADER CATEGORY	SHARE VOLUME Bought	Sold	LARGEST POSITION HELD ( ) indicates short Shares	Date	ESTIMATED RESULT—LOSS
Public (Mining Co. Semi-professional)	83,000	—	83,000	July 29	$225,000
Timmins (Semi-professional)	135,000	135,000	100,500	July 22	142,000
Public (Semi-professional)	66,600	38,300	(19,000)	July 17	141,000
			20,300	July 22	
Other American (Semi-professional)	30,000	—	30,000	July 22	126,000
Public (Semi-professional)	103,000	87,500	103,000	July 28	104,000
Brokerage employee (Noranda)	103,500	91,400	66,500[2]	July 10	94,000
Timmins (Other Public)	32,500	12,500	20,800	July 21	78,000
Noranda (Semi-professional)	62,200	45,500	51,700[3]	July 10	50,000
Sum of Losses for Persons Losing $50,000 or more					$960,000

[1]Based on 2% Commission estimate and share valuations of $.60/share for shares held on June 26 and $1.00/share for shares held after July 31 (as set out in Part I).

[2]19,000 shares held at June 26.

[3]20,000 shares held at June 26.

SPECIAL TABLES

TABLE 42

APPROXIMATE COMMISSIONS ACCRUING FROM THE TRADING OF WINDFALL OILS & MINES LIMITED IN THE PERIOD JUNE 26th to JULY 31st, 1964

	PURCHASES	SALES	TOTAL
Value of Trading	$36,684,522	$36,684,522	—
Less no-commission Trading[1]	7,743,774	8,218,499	—
Commissionable Trading	$28,940,748	$28,466,023	
Approximate Commission Rate[2]	2%	2%	
⅓ Commission to Salesman	$ 192,938	$ 189,773	$ 382,711
⅔ Commission to Brokerage Firms	385,877	379,547	765,424
Gross Commissions	$ 578,815	$ 569,320	
TOTAL GROSS COMMISSION TO BROKERAGE COMMUNITY			$1,148,1[illegible]

[1]No-commission trading includes trading by directors and/or partners of the Brokerage firms and the firm's house and error accounts.

[2]See Table 28

[3]This figure includes commissions charged to customers men on trading done for their own accounts amounts to ⅓ of $132,204 = $44,068.

[4]This figure overstates the share of commissions paid to salesmen by ⅓ of the commissions collected from approved non-member brokers and by ⅓ of the commissions collected from clients of a [illegible] are not clients of a commission-receiving salesman. The amount transferred to the category *Commission to Brokerage Firms* by these adjustments would be small.

TABLE 43

ESTIMATED COMMISSION BENEFIT TO TWO MEMBER FIRMS FRO[illegible] TRADING OF WINDFALL OILS & MINES LIMITED IN THE PERIOD JUNE 26th to JULY 31st, 1964

FIRM A	PURCHASES	SALES	[illegible]
Value of Trading	$4,199,355	$5,009,624	
Less no-commission Trading	(431,286)	(643,911)	
Commissionable Trading	$3,768,069	$4,365,713	
Approximate Commission Rate	2%	2%	
⅓ Commission to Salesmen	$ 25,120	$ 29,105	$ [illegible]
⅔ Commission to House	50,241	58,209	108,[illegible]
Gross Commission	75,361	87,314	
TOTAL GROSS COMMISSIONS			$162,67[illegible]
FIRM B			
Value of Trading	$3,322,926	$2,944,549	
Less no-commission Trading	(49,383)	(68,711)	
Commissionable Trading	$3,273,543	$2,875,838	
Approximate Commission Rate	2%	2%	
⅓ Commission to Salesmen	$ 21,824	$ 19,172	$ 40,996
⅔ Commission to House	43,647	38,345	81,992[3]
Gross Commission	65,471	57,517	
TOTAL GROSS COMMISSIONS			$122,988

[1]To the extent that transactions were made for brokers who were not members of the Toronto Stock Exchange, the commission to salesmen would be reduced. The adjustment would not be significant.

[2]On transactions made for members of the Montreal, Canadian or Vancouver Stock Exchanges, the Commission to House would be ½ rather than ⅔ (See page 157). The adjustment would not be significant

TABLE 44

RELATIVE VALUE TO MEMBER OF EXCHANGE FROM TRADING IN WINDFALL AND TWO ACTIVE INDUSTRIAL STOCKS

To nearest thousand

	WINDFALL June 26-July 31, 1964		MASSEY FERGUSON March 8-April 9, 1965		STELCO March 8-April 9, 1965	
	Buys	Sales	Buys	Sales	Buys	Sales
Value of Trading[1]	$27,941,000	$28,466,000	$7,093,000	$7,093,000	$6,924,000	$6,924,000
Approximate Commission Rate[2]	2%	2%	1.06%	1.06%	1.15%	1.15%
COMMISSIONS ON:						
Buys	$579,000		$75,000		$80,000	
Sales		$569,000		$75,000		$80,000
Approximate Commissions Earned	$1,148,000		$150,000		$160,000	

[1]This trading represents the approximate dollar value of trading on which commissions would accrue to the brokerage industry in 25 consecutive and active trading days. Massey was on the "ten most active traders list" for eighteen of the twenty-five trading days in the period March 8 to April 9, 1965. Stelco was in this category for twenty-one of those days. The dollar value of trading on which no commissions are generated from the public and employees of brokerage firms has been removed for Windfall. No allowance has been made for no-commission trading in the industrial stocks.

[2]Commission Approximation:
(T.S.E. Commission Rates on shares selling at $25.00 and under $40.00 is $.35/sh.)
Massey-Ferguson: average price in period = $33.00 (Commission of $.35 = 1.06%)
Stelco: average price in period = $30.50 (Commission of $.35 = 1.15%)
Windfall: (See Table 28).

FLOOR TRADERS' REMUNERATION

As of July, 1964 trading on the floor of the Exchange was carried on by about 350 floor traders employed by 81 of the Exchange member firms. Of these, 251 bought or sold Windfall shares, either as agents for customers, through house accounts, or through their own personal accounts. These 251 traders were asked to supply certain information; the contents of the following tables is based exclusively on the signed replies of the 251 floor traders.

TABLE 45

FLOOR TRADER EXPERIENCE

	Age	Years Experience
Range	21-70	1-41
Median	34	14
Average	38	17

TABLE 46

FREQUENCY DISTRIBUTION OF ANNUAL SALARIES OF FLOOR TRADERS

[illegible] SALARIES	Total	Not on Salary	0–$5,000	$5,000–$7,500	$7,500–$10,000	Over $10,000
Regular Employee	222	—	84	123	14	1
Director or Partner	29	10	2	9	5	3

[illegible]: $2,000-$14,400
[illegible]: $5,200
[illegible]: $5,511

TABLE 47

PROFITS AND LOSSES IN PERSONAL ACCOUNTS OF FLOOR TRADERS

January 1st, 1963 to August 31st, 1964

TRADER STATUS	Total	Loss Over $10,000	Loss $2,000–$10,000	Loss 0–$2,000	Profit 0–$2,000	Profit $2,000–$10,000	Profit Over $10,000
Regular Employee.....	86	1	2	28	44	7	4
Directors or Shareholders.....	16	2	2	1	3	3	5
Total Traders.....	102	3	4	29	47	10	9

Range: Largest Loss = $25,010; Largest Profit = $32,030. (both were directors)
Median: $438.00 Profit

TABLE 48

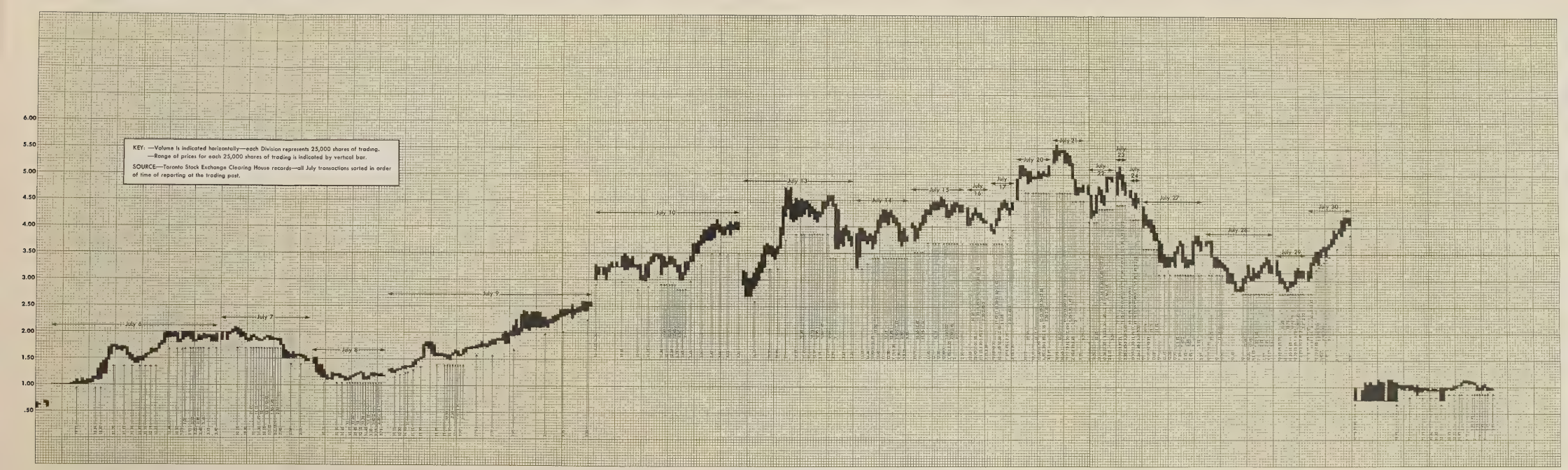
PROFIT AND LOSSES BY FLOOR TRADERS IN HOUSE FLOOR TRADING PARTICIPATION ACCOUNTS—JANUARY 1, 1963–AUGUST 31, 1964

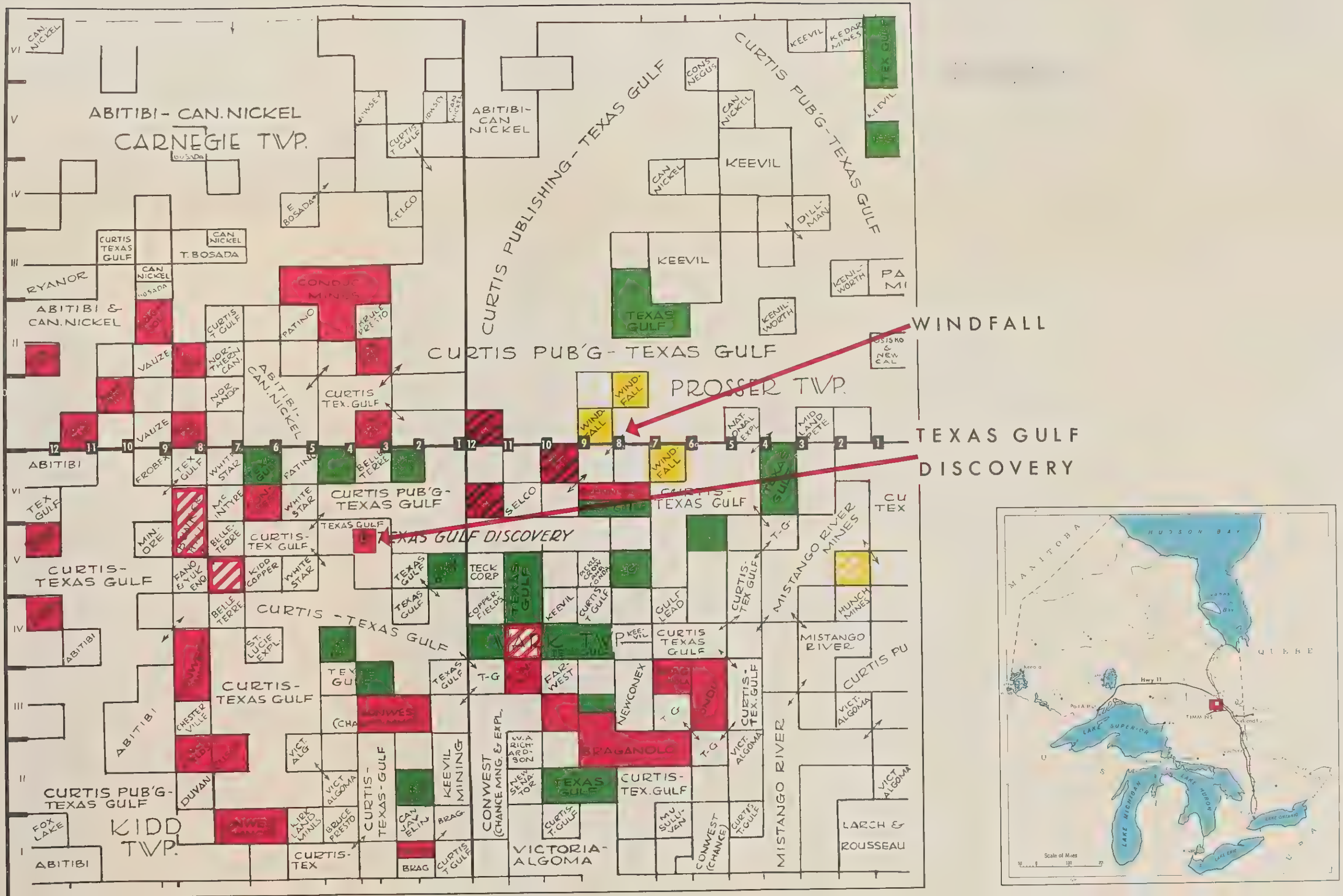
TRADER STATUS	Total	Loss $10,000–$20,000	Loss $2,000–$10,000	Loss 0–$2,000	Profit 0–$2,000	Profit $2,000–$10,000	Profit $10,000–$20,000	Profit Over $20,000
Regular Employees.....	53		3		5	29	10	6
Shareholders or Directors.....	12	1	1		1	2	2	5
Total Traders.....	65	1	4	0	6	31	12	11

Range: Largest Loss $17,573; Largest Profit $60,500.
Median: $7,305.

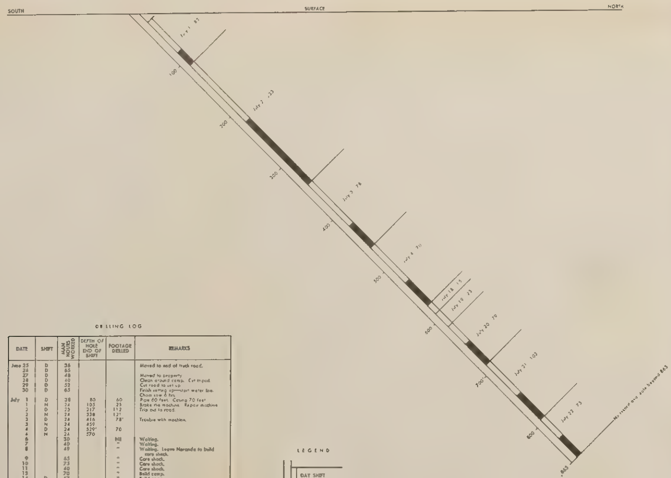
These Tables do not accurately reflect the total remuneration of the floor traders involved, since their results may be affected by bonus arrangements, commissions and other income.

TABLES 49-50-51 INSIDE BACK COVER


KEY: —Volume is indicated horizontally—each Division represents 25,000 shares of trading.
—Range of prices for each 25,000 shares of trading is indicated by vertical bar.
SOURCE—Toronto Stock Exchange Clearing House records—all July transactions sorted in order of time of reporting at the trading post.
6.00
5.50
5.00
4.50
4.00
3.50
3.00
2.50
2.00
1.50
1.00
.50
July 6
July 7
July 8
July 9
July 10
July 13
July 14
July 15
July 16
July 17
July 20
July 21
July 22
July 23
July 24
July 27
July 28
July 29
July 30



WINDFALL
TEXAS GULF
DISCOVERY
ABITIBI - CAN. NICKEL
CARNEGIE TWP.
ABITIBI-CAN NICKEL
CURTIS PUBLISHING - TEXAS GULF
CURTIS PUB'G-TEXAS GULF
KEEVIL
TEXAS GULF
CURTIS PUB'G - TEXAS GULF
PROSSER TWP.
RYANOR
ABITIBI & CAN. NICKEL
T. BOSADA
CURTIS TEXAS GULF
VAUZE
ABITIBI-CAN. NICKEL
CURTIS TEX. GULF
PATINO
ABITIBI
CURTIS PUB'G-TEXAS GULF
SELCO
CURTIS-TEXAS GULF
TEXAS GULF DISCOVERY
CURTIS-TEX GULF
CURTIS-TEXAS GULF
CURTIS - TEXAS GULF
TECK CORP
MISTANGO RIVER MINES
MISTANGO RIVER
CURTIS PUB'G-TEXAS GULF
KIDD TWP.
CONWEST (CHANCE MNG. & EXPL.
VICTORIA-ALGOMA
BRAGANOLO
NEWCONEX
KEEVIL MINING
MISTANGO RIVER
LARCH & ROUSSEAU
ABITIBI
FOX LAKE
DUVAN
HUDSON BAY
MANITOBA
QUEBEC
LAKE SUPERIOR
LAKE MICHIGAN
LAKE HURON
LAKE ONTARIO
LAKE ERIE
Hwy 11
TIMMINS



DRILLING LOG

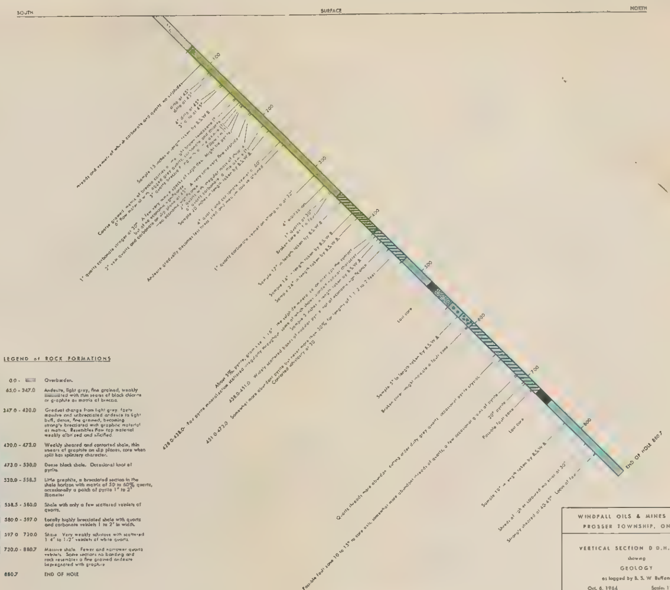
DATE	SHIFT	MAN HOURS WORKED	DEPTH OF HOLE END OF SHIFT	FOOTAGE DRILLED	REMARKS
June 25	D	36			Moved to end of truck road.
26	D	65			
27	D	48			Moved to property
28	D	40			Clean around camp. Cut tripod
29	D	52			Cut road to set up
30	D	65			Finish setting up—start water line. Chain saw 6 hrs.
July 1	D	38	80	60	Pipe 60 feet. Casing 70 feet
1	N	24	105	25	Broke the machine. Repair machine
2	D	23	217	112	Trip out to road.
2	N	24	338	121	
3	D	24	416	78'	Trouble with machine.
3	N	24	459		
4	D	24	529'	70	
4	N	24	570		
6		30		Nil	Waiting.
7		40		"	Waiting.
8		49		"	Waiting. Leave Noranda to build core shack.
9		65		"	Core shack.
10		75		"	Core shack.
11		40		"	Core shack.
13		70		"	Build camp.
14	D	67		"	Build camp.
15	D	67		"	Build camp.
16	D	40		"	Waiting.
17		40		"	Waiting.
18	D	42	585'	15'	Blocky ground. Trouble with supply pump. Waiting.
19	D	24	608'	23'	Blocky ground. Dumont came and fixed the supply pump and machine.
20	D	29	645'	37'	Blocky ground.
20	N	24	687'	42'	Repair supply pump. Blocky.
21	D	31	748'	61'	Dumont came with radiator and water pump.
21	N	24	790'	42'	Blocky.
22	D	24	828'	38'	Cement hole. Not enough cement. Wait for cement.
22	N	24	863'	35'	Drilling cement.
23	D	24			Drilled 73 feet of cement. Cement was not hard enough, so we had to wait.
23	N	16			Broke rod.

LEGEND

WINDFALL OILS & MINES LIMITED
PROSSER TOWNSHIP, ONTARIO

VERTICAL SECTION D.D.H. No. 1
showing
DRILLING LOG of
BRADLEY BROS LIMITED

Scale: 1" = 95



LEGEND of ROCK FORMATIONS

0.0 -		Overburden.
65.0 - 347.0		Andesite, light grey, fine grained, weakly [illegible]ted with thin seams of black chlorite or graphite as matrix of breccia.
347.0 - 420.0		Gradual change from light grey, fairly massive and unbrecciated andesite to light buff, dense, fine grained, becoming strongly brecciated with graphitic material as matrix. Resembles flow top material weakly albitized and silicified.
420.0 - 473.0		Weakly sheared and contorted shale, thin smears of graphite on slip planes, core when split has splintery character.
473.0 - 530.0		Dense black shale. Occasional knot of pyrite.
530.0 - 558.5		Little graphite, a brecciated section in the shale horizon with matrix of 50 to 60% quartz, occasionally a patch of pyrite 1" to 2" diameter
558.5 - 580.0		Shale with only a few scattered veinlets of quartz.
580.0 - 597.0		Locally highly brecciated shale with quartz and carbonate veinlets 1 to 2" in width.
597.0 - 720.0		Shale. Very weakly schistose with scattered 1/4" to 1/2" veinlets of white quartz.
720.0 - 880.7		Massive shale. Fewer and narrower quartz veinlets. Some sections no banding and rock resembles a fine grained andesite impregnated with graphite
880.7		END OF HOLE

WINDFALL OILS & MINES LIMITED
PROSSER TOWNSHIP, ONTARIO

VERTICAL SECTION D.D.H. No. 1
showing
GEOLOGY
as logged by B. S. W. Buffam

Oct. 6, 1964 Scale: 1" = 95